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THE PRACTICAL
JUSTICE OF THE PEACE

AND

PARISH-OFFICER,
OF HIS MAJESTY'S PROVINCE OF
SOUTH-CAROLINA.

By WILLIAM SIMPSON *R*

One of the ASSISTANT-JUDGES of the Court of General Sessions of
the Peace, Assize, &c. of the said Province.

CHARLESTOWN:

Printed by ROBERT WELLS, opposite to the EXCHANGE.

MDCCLXI.

THE PRACTICAL

WILLIAM BULLESS

JUSTICE OF THE PEACE

AND COMMANDER IN CHIEF OF THE DISTRICT

HIS MAJESTY'S JUSTICE OF THE PEACE

PARISH OFFICER

OF HIS MAJESTY'S JUSTICE OF THE PEACE



SOUTH-CAROLINA

By WILLIAM SIMPSON

One of the Assistant-Judges of the Court of General Sessions of

the Peace, Africa, Sec. of the said Province.

Printed by ROBERT WELLS, opposite to the Exchange,
MDCCLXXI

TO THE HONOURABLE
WILLIAM BULL ESQ;
LIEUTENANT-GOVERNOUR
AND COMMANDER IN CHIEF, ETC. IN AND OVER
HIS MAJESTY'S PROVINCE OF SOUTH-CAROLINA,

DISTINGUISHED
BY HIS GENEROUS ZEAL
FOR PROMOTING
EVERY BRANCH OF USEFUL KNOWLEDGE
AND
THE TRUE INTEREST OF THIS PROVINCE;

THIS TREATISE,
CONCERNING THE OFFICE OF HIS MAJESTY'S
JUSTICES OF THE PEACE,
AND PARISH-OFFICERS,

IS INSCRIBED,
WITH THE MOST PROFOUND RESPECT,

BY HIS HONOUR'S
MUCH OBLIGED AND MOST HUMBLE SERVANT
WILLIAM SIMPSON.

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THE Author proposeth in this Book to render the Duty and Office of a Justice of the Peace and Parish-Officer in this Province more easy and intelligible, by attempting to bring together divers Articles relating to the same Subject, and by inserting nothing but what immediately concerns the execution of the said respective Offices.

HE hath not thought himself at Liberty to deliver the Import of the several Acts of Assembly concerning the Duty of the Magistrate and Parish-Officer in his own Words ; but hath constantly abridged the Act in the Words of the Act itself, leaving out nothing material.

He hath also been somewhat large in the Matter
of Precedents. under different Titles, in which he
hath

hath endeavoured to bring them as near as possible
he could to the Acts of Assembly, upon which they
ought to be formed.

THE several Crimes and Offences which, on Account of the Condition and Situation of this Province, have, by sundry Acts of Assembly, been made Felony, are inserted under the Title Felony; and the Offenders in such Cases are to be proceeded against in the same Manner as in other Felonies.

WHERE an Act of Assembly gives Power to Justices of the Peace to hear or determine any Cause or Offence in a summary Way, it is necessarily implied and supposed, as a Part of natural Justice, that the Party be first cited, and have Opportunity to be heard and answer for himself.

AND where an English Statute or Act of Assembly gives Power to Justices to take Order in any Matter according to their Discretion, this shall be understood according to the Rules of Reason, Law and Justice, and not by private Opinion.

UNDER

UNDER the Title Bridges, is to be found the Duty of the Commissioners for repairing High-Roads, private Paths, Creeks, Causeways, and cleansing of Water-Passages; separate Titles could not properly be made for these Matters, for, on Account of their mutual Relation and Dependance on each other, the same Acts of Assembly, which direct and order the Execution of the several Matters therein contained, relating to any one of the said Titles, contain the several Matters relating to all the others.

AND in like Manner, and for the same Reasons, under the Title Rice, are included Pitch, Tar, Turpentine, Shingles, Staves and Fire-wood.

IN order to make this Work useful, plain and easy to every Capacity, the utmost Care has been taken to throw the whole into an Alphabetical Order, thereby placing before the Reader at one View the Substance of the several Matters treated of.

IN a first Essay of this Kind it is scarce possible to avoid Errours and Omissions; the Author therefore

P R E F A C E

fore flatters himself, that the Publick are too reasonable to expect it perfect, and too humane to be censorious; their kind Acceptance of this, till one more compleat shall appear, is all that is expected.

Charlestown, Jan. 7, 1761.

E R R A T A.

Page 4, l. 15, from the bottom, r. *saith*. p. 72, l. 12, r. *to* charge. p. 166, l. 2, after freeholders, add, *of the said justices and three freeholders*. p. 196, l. 13 from bottom r. *white male-servants*. p. 228, l. 7 from bottom, for *or* r. *of*. p. 276, l. 6, r. *have*.

T H E

PRACTICAL JUSTICE OF PEACE, &c.

Of Conservators of the Peace.

HIS Excellency the Governour of this Province for the time being is the principal Conservator of the Peace. The power of constituting Justices of the Peace being only in the King: they are by commission under the Great Seal of the Province nominated and appointed by the Governour in council, and are made of the most sufficient persons dwelling in the same county, by the advice of the council, of whom some of the greater quality are of the Quorum, because business of importance may not be dispatched without the presence of them or one of them.

The Form of the Commission is as follows:

SOUTH-CAROLINA.

GEORGE the Second by the Grace of God of Great-Britain, France and Ireland, King, Defender of the Faith, and so forth,

To our Trusty and well-beloved, the Honourable A. B.

C. D. &c. Esquires for Berkley-County.

E. F. G. H. &c. Esquires for Colleton-County.

I. K. L. M. &c. Esquires for Granville-County.

N. O. P. Q. &c. Esquires for Craven-County.

“ K NOW ye, That we have assigned you, and every one
“ of you, jointly and severally, that is to say, you the said
“ A. B. C. D. &c. Esquires, to be Justices for Berkley-County;

B

“ E. F:

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“ E. F. G. H. &c. Esquires, to be Justices for Colleton-County ;
 “ I. K. L. M. &c. Esquires, to be Justices for Granville-
 “ County ; N. O. P. Q. &c. Esquires, to be Justices for Cra-
 “ ven-County, to keep or cause to be kept, all the statutes of
 “ Great-Britain, of force in this Province, and all and every
 “ the Acts and Ordinances of the General Assembly of the
 “ said Province, made for the good of the peace and for con-
 “ servation of the same, and for the quiet rule and govern-
 “ ment of our people, and all and every the articles thereof
 “ in our said counties, according to the force, form and effect, of
 “ the said statutes, and acts and ordinances of the General As-
 “ sembly ; and to cause to come before you, or any of you,
 “ all those persons who shall threaten any of the people in
 “ their persons, or to burn their houses, to find sufficient secu-
 “ rities for the people, and for the good behaviour towards us
 “ and the people ; and if they shall refuse to find such securi-
 “ ties, then to cause them to be kept safe in prison, until they
 “ find such securities ; and also to inquire in your respective
 “ counties aforesaid, of all and all manner of felonies, tref-
 “ passes, and of all and singular other misdeeds and offences
 “ whatsoever, committed by negroes, mulattoes, or mustees,
 “ of which Justices of the Peace may or ought lawfully to in-
 “ quire and adjudge ; and likewise in your respective counties
 “ aforesaid to examine, hear, try, judge, and finally deter-
 “ mine small and mean causes, agreeable to the act of the
 “ General Assembly in that case made and provided. We
 “ have also assigned you, and every two or more of you,
 “ whereof you the said A. B. &c. (shall be one) of our Justices,
 “ to inquire in the several and respective counties aforesaid, of all
 “ and all manner of trespasses, forestallings, and extortions
 “ whatsoever, and of all and singular other misdeeds and of-
 “ fences, of which Justices of the Peace may or ought lawfully
 “ to inquire, by whomsoever or howsoever done or perpetrated,
 “ or which hereafter shall howsoever be done or attempted to
 “ be done in the counties aforesaid, and of all those in the said
 “ counties, who have either gone or ridden, or hereafter shall
 “ presume to go or ride in company, or lie in wait to maim or
 “ kill our people ; and also of innholders, and of all and sin-
 “ gular other persons who have offended or attempted, or here-
 “ after shall presume with armed force to offend, or attempt
 “ against the peace, to the disturbance of the people ; and also
 “ of

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“ of all those who in like manner have lain in wait, or here-
 “ after shall presume to offend or attempt in the abuse of
 “ weights and measures, or in the sale of victuals against the
 “ forms of the ordinances or statutes of Great-Britain of force
 “ in South-Carolina aforesaid, and according to the laws and
 “ statutes of the said Province, or any of them made in that
 “ behalf, for the common good of the said Province, and the
 “ people thereof in the counties aforesaid; and of all and
 “ singular the articles, circumstances, and all other things
 “ whatsoever by whomsoever, or howsoever done or perpetrated
 “ in the counties aforesaid, or which hereafter shall happen to
 “ be done or attempted to be done in anywise more fully
 “ concerning the truth of the premisses or any of them. And
 “ we command you, and every one of you, that you dili-
 “ gently attend the keeping of the peace, ordinances, statutes,
 “ and the acts of the General Assembly aforesaid, and that
 “ you make inquiries, and hear, determine all and singular
 “ the premisses, and perform and fulfil the same, in manner
 “ and form as aforesaid, doing therein what to justice apper-
 “ taineth, according to the said laws, ordinances, and acts of
 “ the General Assembly, saving to us the amerciaments, and
 “ other things to us thereof belonging.” WITNESS &c.

Given, &c.

But notwithstanding a Justice of Peace be named in the above Stat. 1. Geo.
 recited commission, yet in regard every Justice of Peace is taken
 to be within the statute 1. Georgii, intituled *An Act for the*
further security of his Majesty's person and government, and the
succession of the crown in the heirs of the late princess Sophia being
protestants, and for extinguishing the hopes of the pretended prince
of Wales, and his open and secret abettors: before he takes upon
 him to execute his office, he must take the following oaths,
 make and subscribe this declaration. I A. B. do declare, that I
 do believe that there is not any transubstantiation in the sacrament
 of the Lord's supper, or in the elements of bread and wine, at, or
 after the consecration thereof, by any person whatsoever.

Oath of Allegiance.

I A. B. do sincerely promise and swear, that I will be faithful, By 1. Geo.
 and bear true allegiance to his Majesty King George the Second. Stat. 2. c. 13.
 So help me God.

B 2

Oath

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Oath of Supremacy.

By 1 Geo.
Stat. 2. c. 13.

I A. B. do swear, that I do from my heart abhor, detest and abjure, as impious and heretical, the damnable doctrine and position, that princes excommunicated or deprived by the pope, or other authority of the See of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare that no foreign prince, person, prelate, state, or potentate, hath, or ought to have, any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual within this realm.

So help me God.

Oath of Abjuration.

By 1 Geo.
Stat. 2. c. 13.

I A. B. do truly and sincerely acknowledge and profess, testify and declare in my conscience before God and the world, that our sovereign Lord King George the Second, is lawful and rightful King of this realm, and all other his Majesty's dominions and countries thereunto belonging. And I do solemnly and sincerely declare, that I do believe in my conscience, that the person pretended to be prince of Wales, during the life of the late King James, and since his decease pretending to be, and taking upon himself the stile and title of King of England, by the name of James the third, or of Scotland, by the name of James the eighth, or the stile and title of King of Great-Britain, hath not any right or title whatsoever to the crown of this realm, or any other the dominions thereto belonging; and I do renounce, refuse and abjure any allegiance or obedience to him. And I do swear, that I will bear faithful and true allegiance to his Majesty King George the Second, and him will defend to the utmost of my power against all traitorous conspiracies and attempts whatsoever, which shall be made against his person, crown and dignity. And I will do my utmost endeavour to disclose and make known to his Majesty and his successors, all treasons and traitorous conspiracies which I shall know to be against him or any of them. And I do faithfully promise to the utmost of my power to support, maintain and defend the succession of the crown against him the said James, and all other persons whatsoever, which succession, by an Act, intituled, An act for the further limitation of the crown, and better securing the rights and liberties of the subject, is and stands limited to the Princess Sophia, Electress and Dutches Dowager of Hanover, and the heirs of her body being protestants. And all these things I do plainly and
sincerely

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sincerely acknowledge and swear, according to the express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, abjuration, renunciation and promise, heartily, willingly and truly upon the true faith of a christian.

So help me God.

The Declaration against Popery.

I A. B. do solemnly and sincerely, in the presence of God, profess, By 30 Ch. 2.
St. 2. c. 1. testify and declare, that I do believe that in the sacrament of the Lord's supper there is not any transubstantiation of the elements of bread and wine into the body and blood of Christ, at or after the consecration thereof by any person whatsoever; and that the invocation or adoration of the Virgin Mary, or any other Saints, or sacrifice of the mass, as they are now used in the Church of Rome, are superstitious and idolatrous. And I do solemnly, in the presence of God, profess, testify and declare, that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words read unto me as they are commonly understood by English protestants, without any evasion, equivocation, or mental reservation whatsoever, or without any dispensation already granted me for that purpose by the pope, or any other authority whatsoever, or without any hope of such dispensation from any person or authority whatsoever, or without thinking that I am, or may be acquitted before God or man, or absolved of this declaration or any part thereof, although the pope, or any other person or persons, or power, whatsoever, should dispense with or annul the same, or declare that it was null and void from the beginning.

The Oath of a Justice of Peace.

YOU do swear, that in the office of a justice of peace, in and for the county of A. in all and every the articles in his Majesty's commission enjoined, and to you directed, you will do equal right to the poor and rich, according to your knowledge, and the laws and statutes of Great-Britain, of force in this province, and the acts of assembly of the said province. You shall not be of council to any person in any quarrel depending before you: And you shall, according to the directions of the several acts of Assembly, truly account for and pay, or cause to be paid, all the fines and forfeitures which shall be recovered before you. You shall not spare any one
for

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for any gift, or other cause, nor take any thing for doing the business of your office of justice of the peace, but the fees and allowances accustomed and fixed by act of assembly: You shall not direct nor cause to be directed, any warrant by you made, to the parties themselves, but to the constables of the said county, or other the King's officers, or indifferent persons to execute the same: And in all things you shall well and truly do, and execute the office of a justice of peace.

So help you God.

A Justice thus sworn may enter upon his office; and the peace is to be preserved by him three ways.

1. Preventive, by taking surety for the keeping of it, or good behaviour.
2. Pacifying such as are actually breaking it.
3. As he has no power to hear or determine any breach of the peace whatever, he must bind over the informer, as well as the offender to the court of General Sessions of the Peace, Assize, &c. where, by a presentment upon the Statute, the party must be prosecuted.

A justice of the peace, by virtue of the word *Assignavimus* in the commission, is constituted conservator of the peace, and hath thereby a separate power, and may do all acts apart of himself for the preservation of the peace, and may send his warrant for the party, and may take sufficient sureties of him by recognizance for keeping the peace, or for the good behaviour, as the case shall require, and may send the party to goal for not finding such sureties. And generally in all cases they may take the examinations and commit the offenders, and bind over the prosecutors to the assizes, where they ought duly to certify their proceedings on pain of being fined. But in his own case he is not to judge, and ought not to execute his office, unless he is assaulted or insulted in the execution of his office, and then he may commit the offender: he may likewise record a forcible entry upon his own possession.

As justices of peace are favoured by the law, in the execution of their office, so they are punished for any misdemeanours. *Sed. 192*, For a Justice of the peace may be indicted for taking money in the execution of his office, or any corrupt practices by colour thereof. *Sav. Rep. 134. Keb. Rep. 1 part. 727.*

Authority

Accessory.

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Authority given to justices of the peace must be exactly pursued, and so it ought to appear in their orders and determinations. 2 *Salk.* 475. And it is to be observed justices of the peace cannot meddle with any thing, but such as the statutes empower them, for they have their whole power by the statutes of Great-Britain, and the acts of assembly of this province.

How Justices of the Peace may defend themselves against suits brought against them for any thing done Virtute Officii.

IF any action, bill, plaint, or suit upon the case, trespass, battery or false imprisonment, shall be brought any where against a justice of peace for any thing done *Virtute Officii*, it shall be lawful for them, or any other who act in their aid, assistance, or by their commandment, to plead the general issue, and to give the special matter in evidence. If the verdict pass for the defendant, or the plaintiff be nonsuited or discontinue, the defendant shall have his double costs. 7, *Jac.* 1. c. 5.

Hitherto of Generals: The following heads relate to such particular laws and matters, as concern the cognizance and jurisdiction of the justices of the peace in this province, under alphabetical Divisions.

Accessory.

I. Of Accessories in general.

II. Of Accessories before the Fact.

III. Of Accessories after the Fact.

IV. How they are to be proceeded against.

I. Of Accessories in general.

1. **A**CCCESSARY is he that is not the chief actor, but one that is concerned in the felony by commandment, aid or receipt.

2. In the highest capital offence, namely High Treason, there are no accessories, neither before nor after; for the confesters, aiders, abettors and knowing receivers and comforters of traitors are all principals. 1. *Hale's Hist.* 613.

When:

Accessory.

When any offence is felony, either by the common law or by statute, all accessories both before and after are incidentally included. 3. *Inst.* 59. But when an act of parliament enacts an offence to be felony, though it mention nothing of accessories before or after, yet virtually and consequentially those that counsel or command the offence, are accessories before, and those that knowingly receive the offender are accessories after. 1. *H. H.* 613. But if the act of parliament that makes the felony, in express terms, comprehends accessories before, and make no mention of accessories after, namely receivers or comforters, there it seems there can be no accessories after; for the expression of procurers, counsellors, or abettors, all which import accessories before, make it evident, that the law-makers did not intend to include accessories after, which is an offence of a lower degree than accessories before. 1. *H. H.* 614.

And although an act of parliament creating a felony, generally renders consequentially accessories, before, and after, within the same penalty, yet the special penning of the act of parliament in such cases sometimes varies the case. Thus the statute of 3 *H. 7. c. 2.* for taking away women makes the offender, and the procuring and abetting, yea and wittingly receiving also, to be all equally principal felonies, and excluded of clergy. Again, the statute of 27. *Eliz. c. 2.* makes the coming in of a jesuit Treason, the receiving or relieving him Felony, the contributing of money to his relief a Premunire.

II. Of Accessories before the Fact.

AN accessory before the fact is, he that being absent at the time of the felony committed, doth yet procure, counsel, command or abett another to commit a felony, for if he is present he is not an accessory but a principal. If divers come to commit an unlawful act, and be present at the time of the felony committed, though one of them only doth it, they are all principals. *Hale* 215.

So if one present move the other to strike, or if one present did nothing, but yet came to assist the party if needful; or if one hold the party while the felon strikes him; or if one present deliver his weapon to the other that strikes; for they are present, aiding, abetting or comforting. *Id.* 216. But if one came casually, not of the confederacy, though he hindered not the felony,

felony, he is neither principal nor accessory, although he apprehend not the felon; but for his negligence he is punishable by fine and imprisonment. 2 *Hawk.* 313.

If one command another to lay hold on a third person, and he lays hold upon and robs him, the person commanding is not accessory to the robbery, for his command might have been performed without any robbery. *Dalt. c. 161.* But if the command had been to beat him, and the party commanded doth kill him or beat him, so that he dieth thereof, the person commanding shall be accessory to the murder; for it is a hazard in beating a man that he may die thereof. *Dalt. c. 161.*

He that commandeth or counselleth any evil or unlawful act to be done, shall be adjudged accessory to all that shall ensue upon the same evil act, but not to any other distinct thing; as if one command another to steal a horse, and he stealeth an ox; or to rob a man by the high-way of his money, and he robs him in his house of his plate; or to burn such a one's house, and he burneth the house of another, these are other acts and felonies than he commanded to be done, and therefore he shall not be adjudged accessory to them. *Dalt. 161.*

But if a person commit the same felony which another did command or counsel to be done, though he doth it at another time, or in another place, or in another sort than was commanded or counselled, yet here such person commanding or counselling shall be accessory; as if he doth counsel to kill a man by poison, and he kills him with a dagger; or to kill him by the high-way, and he kills him in his house; or to kill him one day, and he kills him on another day; in these and the like cases he shall be accessory. *Dalt. c. 161.*

Those offences which in the construction of law are sudden and unpremeditated, cannot have any accessories before. As killing a man by misadventure in his own defence, or manslaughter: for in such case there can be no procuring counselling, commanding or abetting. But there may be accessories after. 1. *H. H. 616.*

If a man counsels or commands another to kill a person, and before he hath killed him, he who counselled or commanded it repents, and countermands it, charging him not to kill him, and yet after, he doth kill him, here such person countermanding shall not be adjudged accessory to the murder: for the law adjudgeth no man accessory to a felony before the fact, but such

as continue in that mind at the time the felony is done and executed. *Dalt.* 161.

But if a person advise a woman to kill her child as soon as it shall be born, and she shall kill it in pursuance of such advice, he is an accessory to the murder, though at the time of the advice, the child not being born, no murder could be committed of it: for the influence of the felonious advice continuing till the child was born, makes the adviser as much a felon as if he had given his advice after the birth. 2. *Haw.* 315.

III. Of Accessories after the Fact.

ACCCESSARY after the fact is, where a person knowing the felony to be committed by another, relieves, comforts, or assists the felon. 1. *H. H.* 618.

Knowing the felony to be committed.] There can be no doubt but that it is necessary that the receiver have notice of the felony, either express or implied, and so to be laid in the indictment, that the receiver knew the person received by him, had committed the principal felony. 2. *H.* 319.

The felony.] This holds only in felonies, and in those felonies where, by the law, judgment of death regularly ought to ensue; and therefore not in petit larceny. 1. *H. H.* 618.

And therefore if a person do barely receive, comfort, or conceal an offender guilty of any common trespass, or inferiour crime of the like nature, though he know him to have been guilty, and that there is a warrant out against him, yet he is not an accessory to the offence; but perhaps in such case he may be indictable for a contempt of the law, in hindering the due course of justice. 2. *Haw.* 311.

Relieves, comforts, or assists the felon.] In the explication of these words, several things are considerable; generally any assistance whatsoever given to one known to be a felon, in order to hinder his being apprehended or tried, or suffering the punishment to which he is condemned, is sufficient to bring a man within this description, and make him accessory to the felony; as where one assists him with a horse to ride away with, or with money and victuals to support him in his escape. 2. *Haw.* 317. But if a man knows that a person hath committed a felony, but doth not discover it, this doth not make him an accessory, but it is a misprision of felony, for which he may be indicted,

indicted, and upon his conviction fined and imprisoned. 1. *H. H.* 618. Also, if a man sees another commit a felony, but consents not, nor yet takes care to apprehend him, nor to levy hue and cry after him, or upon hue and cry levied doth not pursue him, this is a neglect punishable by fine and imprisonment, but it doth not make him an accessory. 1. *H. H.* 618.

In like manner, if one commit a felony, and come to a person's house before he be arrested, and such person suffer him to escape without arrest, knowing him to have committed a felony, this doth not make him accessory; but if he take money of the felon to suffer him to escape, this makes him accessory: and so it is if he shut the fore door of his house, whereby the pursuers are deceived, and the felon hath opportunity to escape, this makes him an accessory; for here is not a bare omission, but an act done by him to accommodate the felon's escape. 1. *H. H.* 619.

And whosoever rescues a felon from an arrest for the felony, or voluntarily suffers him to escape, is an accessory to the felony. 2. *Haw.* 318.

But if a felon be in prison, he that relieves him with necessary meat, drink, or cloaths, for the sustentation of life, is not accessory. 1. *H. H.* 620. So if he be bailed out, it is lawful to relieve and maintain him, for he is still in some sort in custody, and is under a certainty of coming to his trial. 1. *H. H.* 620.

But if a felon be in goal; for a man to convey instruments to him to break prison to make an escape, or to bribe the goaler to let him escape, makes the party an accessory; for though common humanity allows every man to afford such persons necessary relief, yet common justice prohibits all unlawful attempts to cause their escapes. 1. *H. H.* 621.

The sending a letter in favour of a felon, or advising to labour witnesses not to appear, makes no accessory, but it is a high contempt. *Hale's Pl.* 219.

A man may be accessory to an accessory, by the receiving of him, knowing him to be an accessory to felony. 1. *H. H.* 622.

If a man has goods stolen, and he receives his goods again, simply, without any contract to favour the felon in his prosecution, this is lawful; but if he receives them upon agreement not to prosecute, or to prosecute faintly, this is theftbote, punishable by imprisonment and ransom, but yet it makes him

not an accessory ; but if he takes money of him to favour him, whereby he escapes, this makes him accessory. 1. *H. H.* 619. And if any person shall receive or buy stolen goods, knowing them to be stolen ; or shall receive, harbour, or conceal the thieves, he shall be deemed an accessory. 3 *W. c.* 9. § 4. 5 *Ann. c.* 31. § 5. 4 *Geo. c.* 11. And buying the goods at an under value, is a presumptive evidence that he knew they were stolen. 1. *H. H.* 619.

The law hath such a regard to that duty, love, and tenderness, which a wife owes to her husband, as not to make her an accessory to felony, by any receipt given to her husband ; yet if she be any way guilty in procuring her husband to commit it, it seems to make her an accessory before the fact, in the same manner as if she had been sole. No other relation besides that of a wife to her husband will exempt the receiver of a felon from being an accessory to the felony ; from whence it follows, that if a master receive a servant, or a servant a master, or a brother a brother, or even a husband a wife, they are accessories in the same manner as if they had been mere strangers to one another. 2. *Haw.* 320. But if the wife alone, the husband being ignorant of it, do receive any other person being a felon, the wife is accessory and not the husband. 1. *H. H.* 621.

But if the husband and wife both receive a felon knowingly, it shall be judged only the act of the husband, and the wife shall be acquitted. *Id.*

IV. *How they are to be proceeded against.*

THOSE who are accused of the receipt of felons, or of commandment, or of force, or of aid of felony done, areailable, where it stands indifferent whether the party be guilty or innocent ; but if there are strong presumptions of guilt they are notailable.

The authority of justices of the peace of this province goes no farther than binding over accessories to felony, to the court of General Sessions of the Peace, Oyer and Terminer, Assize, and general Goal Delivery ; therefore it is unnecessary to say any thing concerning the mode of their trial.

Affray.

- I. What is an Affray.
- II. How far it may be suppressed by a private person.
- III. How far by a Constable.
- IV. How far by a Justice of the Peace.
- V. Punishment of an Affray.

I. *What is an Affray.*

AN Affray is a publick offence to the terrour of the King's subjects, and is an English word, and so called because it affrighteth and maketh men afraid. 3. *Inst.* 158. There must be a stroke given or offered, or a weapon drawn, otherwise it is not an affray. 3. *Inst.* 158.

Although no bare words in the judgment of law, carry in them so much terrour as to amount to an affray, yet it seems certain, that in some cases there may be an affray where there is no actual violence, as where a man arms himself with dangerous and unusual weapons, in such a manner as will naturally cause a terrour to the people, which is said to have been always an offence at the common law, and is strictly prohibited by statute.

II. *How far it may be suppressed by a private person.*

IT seems agreed, that any one who sees others fighting may lawfully part them, and also stay them till the heat be over, and then deliver them to the constable, to be carried before a justice to find sureties for the peace. 1 *Haw.* 136. And the law doth encourage him hereunto; for if he receives any harm by the affrayers, he shall have his remedy by law against them, and if the affrayers receive hurt, by endeavouring only to part them, the standers-by may justify the same, and the affrayers have no remedy by law. 3. *Inst.* 158.

But if either of the parties be slain or wounded, or so stricken that he falleth down for dead, in that case the standers-by ought to apprehend the party so slaying, wounding or striking, or to endeavour the same by hue and cry; or else for his escape they shall be fined and imprisoned. 3. *Inst.* 158.

III. *How*

III. *How far by a Constable.*

A Constable is not only impowered, as all private persons are, to part an affray which happens in his presence, but is also bound at his peril to use his best endeavours to this purpose, and not only to do his utmost himself, but also to demand the assistance of others, which if they refuse to give him, they are punishable with fine and imprisonment. 1. *Haw* 137.

And it is said, that if a constable see persons either actually engaged in an affray, as by striking or offering to strike, or drawing their weapons or the like, or upon the very point of entering upon an affray; as where one shall threaten to kill, wound, or beat another, he may either carry the offender before a justice to find sureties for the peace, or he may imprison him of his own authority for a reasonable time, till the heat shall be over, and also afterwards detain him till he find such surety by obligation. But he has no power to imprison such an offender in any other manner, or for any other purpose; and he ought not to lay his hands on those who barely contend with hot words, without any threats of personal hurt; all he can do in such case, is to command them under pain of imprisonment to avoid fighting. 1. *Haw*. 137.

He is so far entrusted with a power over all actual affrays, that though he himself is a sufferer by them, and therefore liable to be objected against, as likely to be partial in his own cause, yet he may suppress them; and therefore if an assault be made upon him, he may not only defend himself, but also imprison the offender, in the same manner as if he were no way a party. 1. *H*. 137.

And if an affray be in an house, the constable may break open the doors to preserve the peace; and if affrayers fly to an house, and he follow with fresh suit, he may break open the doors to take them. 1. *Haw*. 137.

But a constable hath no power to arrest a man for an affray done out of his own view, without a warrant from a justice, unless a felony is done, or likely to be done; for it is the proper business of a constable to preserve the peace, and not to punish the breach of it. 1. *Haw*. 137.

IV. *How far by a Justice of Peace.*

THERE is no doubt but he may, and must do all such things to that purpose which a private man or constable are either enabled, or required by the law to do: But it is said, he cannot without a warrant authorise the arrest of any person for an affray out of his own view; yet it seems clear, that in such case he may make his warrant to bring the offender before him, in order to compel him to find sureties for the peace. 1. *Haw.* 137.

V. *Punishment of an Affray.*

ALL Affrays in general, are punishable by fine and imprisonment. 1. *Haw.* 138.

Warrant to apprehend Affrayers.

Berkely } ff. By A. B. Esq; one of his Majesty's Justices of the
County, } Peace, for Berkley county aforesaid.

To any lawful Constable of the said County.

WHEREAS C. D. of yeoman, (or as his addition may be) hath this day made oath before me, that on the day of E. F. of yeoman, and G. H. of yeoman, at in the said county in a tumultuous manner made an affray wherein the person of the said C. D. was beaten and abused by them the said E. F. and G. H. without any lawful or sufficient provocation given to them or to either of them, by him the said C. D.

These are therefore to command you forthwith to apprehend the said E. F. and G. H. and bring them before me, or some other of his Majesty's justices of the peace for the said county, to answer the premisses, and to find sureties for their personal appearance at the next General Sessions of the peace, then and there to answer to an indictment to be preferred against them by the said C. D. for the said Offence; as also for their keeping the peace in the mean time towards all his Majesty's liege subjects; and especially towards the said C. D. Hereof fail not, as you will answer the contrary at your peril.

Given under my hand and seal, the day of and in the year of his Majesty's reign.

The

Apprentices.

The prosecutor as well as the offender, must be bound in a recognizance to appear, prosecute, and give evidence at the same sessions. For form of recognizances, *vide* title *Recognizance*.

Apprentices.

I. Who may take Apprentices.

II. Binding.

III. Binding poor Apprentices.

IV. Master dying.

V. Differences between the Master and Apprentice.

I. *Who may take Apprentices.*

A. A. 14. G.
II.

ENACTS, That any person of any lawful employment, calling, art, mystery, or trade, may take one or more apprentice or apprentices. But no male apprentice is obliged to serve after he shall have attained the age of one and twenty years, or a female after she shall have attained the age of eighteen years,

II. *Binding.*

ONE cannot be bound an apprentice without deed; and it must be indented and executed in the presence of, and with the approbation of his or her father, mother, or guardian; and such indenture must be certified under hand and seal, by any one justice of the peace for the county in which such indenture is executed,

III. *Binding poor Apprentices.*

THE Church-wardens may bind any such children who have no father, mother or guardian, or such whose parents they shall judge not able to maintain them, to be apprentices where they shall see convenient, till such male child shall come to the age of twenty one years, and female to eighteen years; which indenture or indentures, so executed and certified by a justice of the peace, shall be good and effectual to all intents and

and purposes, as if such apprentice had been of full age, and by indenture of covenant had bound him or herself.

How Indentures may be transferred.] The master, or mistress, of any apprentice, indented to serve within this province, upon sufficient cause, to be approved of by the parent, or guardian, or where there is no parent or guardian, by the church-wardens of the parish where such master or mistress resides, may assign and transfer the indenture of such apprentice to any other master or mistress, exercising within this province the same employment, calling, trade, art, or mystery, which indenture so assigned shall be valid to the assignee, as to the time unexpired, and he becomes equally bound to the apprentice, according to the tenour of the indenture, as the original master or mistress was.

IV. *Master dying.*

THE time of service of an apprentice remaining unexpired at the death of his or her master or mistress, is deemed and taken as assets in the hands of the executors or administrators of any such master or mistress; and such executor or administrator may retain any such apprentice in their own service during the remainder of such time; provided the executor or administrator so retaining such apprentice, doth, at the time of such retainer, carry on and exercise, by himself, or some other white person in his employ, within the same parish where the testator lived, the same employment, calling, trade, art or mystery, to which the apprentice was bound by his indenture; or otherwise, if the executors or administrators of such deceased person think fit, they may assign and transfer such indenture, and the time therein unexpired (with the consent of any two justices of the peace of the county where the assignee resides) to any other person carrying on and exercising within this province, the same employment, trade, calling, art or mystery, specified in the said indenture.

V. *Differences between the Master and Apprentice.*

IF any master or mistress shall misuse or evilly intreat his or her apprentice, or if the said apprentice shall have any just cause to complain, or do not his or her duty to the said
D master

Apprentices.

master or mistress, then and in such case the said master, mistress and apprentice, being grieved, and having just cause to complain, may repair and make complaint to any two justices of the peace, within the county where such master and mistress resides, who are authorised and required, by their wisdom and discretion to make such order, and give such directions, between the master, mistress and apprentice, as the equity and justice of the case shall require. But if the master, mistress, or apprentice, shall not rest satisfied with such order or direction of the justices, the party dissatisfied may repair, and make complaint to the chief justice, who, with the assistance of any two of the assistant judges, are authorised to summon all parties concerned, and to re-examine the cause of complaint, and the order and direction therein made by the justices, and to confirm or reverse the same, or to make such order on that occasion as to them should seem meet, either by discharging the apprentice from his or her apprenticeship, or causing due correction and punishment to be inflicted upon such apprentice. If the apprentice is discharged, the discharge must be in writing, under the hands and seals of the chief justice, and his two assistants, setting forth the cause or causes thereof, which writing being made and filed by the clerk of the Court of Sessions, Assize, &c. amongst the records, shall be a sufficient discharge for the apprentice against his master, his executors and administrators.

AN INDENTURE of a Parish Apprentice.

THIS indenture, made the ——— day of ——— in the year of our Lord ——— between A. P. a poor boy of ——— in the county of ——— by and with the consent and approbation of C. D. and E. F. church-wardens of the said parish, of the one part, and A. M. of ——— in the said parish, shoemaker, of the other part, witnesseth, That the said A. P. in the presence of, and with the approbation of the church-wardens aforesaid, hath by these presents, put, placed and bound himself, to be an apprentice with him the said A. M. and as an apprentice with him the said A. M. to dwell, from the date of these presents, until the said A. M. shall come to the age of twenty-one years (or if a female, until the said A. P. shall come to the age of eighteen years) according to the Act of Assembly in such case made and provided. By and during

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during all which time and times the said A. P. shall the said A. M. his said master well and faithfully serve, in all such lawful business as the said A. P. shall be put unto by the command of his said master, according to the power, wit, and ability of him the said A. P. and honestly and obediently in all things shall behave himself towards his said master, and honestly and orderly towards the rest of the family of the said A. M. And the said A. M. for his part, for himself, his executors and administrators, doth hereby promise and covenant to and with the said A. P. that he the said A. M. shall the said A. P. in the craft, mystery and occupation of a shoemaker, which he the said A. M. now useth, after the best manner that he can or may teach, instruct, and inform, or cause to be taught, instructed and informed, as much as thereunto belongeth, or in any wise appertaineth; and that the said A. M. shall also, during all the said term, find and allow unto the said apprentice, sufficient meat, drink, apparel, washing, lodging, and all other things needful and meet for an apprentice, in such manner that the said apprentice shall not at any time during the said term be in any wise a charge to the said parish or parishioners thereof. In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

Signed sealed and delivered
in the presence of

Approbation of the Church-wardens.

We C. D. and E. F. church-wardens of the above-mentioned parish of — do hereby declare our approbation to the binding the above named A. P. apprentice to the above-named A. M. according to the form and effect of the above-written indenture. Given under our hands the — day of, &c.

Complaint of an Apprentice to two Justices against his Master.

Berkley } **T**HE information and complaint of A. P. apprentice A. A. 14. G.
County, } to A. M. of — in the said county wheelwright, II.
taken and made (on oath, if he is above fourteen years of age) before us, two of his Majesty's justices of the peace in and for the said county, the — day of — in the year, &c. who saith, that he the said A. P. about a year and a half ago last past, became bound an apprentice by indenture to A. M. of — aforesaid, wheelwright; that at several times since he entered upon the said apprenticeship,

Apprentices.

prenticeship, the said A. M. hath misused and ill-treated him the said apprentice, and particularly (as the case shall be)

A. P. his mark.

Taken and signed the day and year above, before us,

I. P.

K. P.

Warrant against the Master for misusing his Apprentice.

By I. P. and K. P. two of his Majesty's Justices for the county aforesaid.

To the Constables of the said County.

WHEREAS complaint hath been duly made unto us by A. P. apprentice unto A. M. of — in the said county, shoemaker, That the said A. M. hath misused and evil intreated him the said A. P. by cruel punishment, and beating him the said A. P. without just cause, and by not allowing to him sufficient meat, drink, apparel (or as the case shall be.)

These are therefore in his Majesty's name to command you to cause the said A. M. personally to appear before us at the house of — on the — day of — at the hour of — in the afternoon of the same day, to answer unto the said complaint; and also to cause the said apprentice to appear before us at the same time and place, to make good his said complaint; herein fail not. Given under our hands and seals the — day of, &c.

Complaint to two Justices of the Master against his Apprentice.

A. A. 14 Geo.
II.

Berkley }
County }

THE complaint of A. M. of — in the said county, carpenter, taken on oath before us I. P. and K. P. two of his Majesty's justices of the peace in and for the said county, the — day of — who saith, That A. P. having been bound to him an apprentice, by indenture bearing date the — day, &c. and having entered upon his apprenticeship accordingly, hath been refractory and disobedient to him the said A. M. and particularly (as the case shall be)

A. M.

Taken the day and year above,

Before us I. P.

K. P.

Warrant

Apprentices.

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Warrant against the Apprentice on Complaint of the Master.

Berkley } ff. By I. P. and K. P. two of his Majesty's justices of
County, } the peace for the county aforesaid.

To the Constables of the said County.

WHEREAS complaint hath been duly made unto us by A. M. of — in the said county, carpenter, that A. P. now being an apprentice to him the said A. M. is negligent, stubborn, disorderly, and doth not his duty to him the said A. M. his master; these are therefore to command you to bring the said apprentice before us at — on the — day of — and to give notice to the said master, that he appear before us at the same time that such order may be taken in the premisses, as equity shall require; herein fail not. Given under our hands and seals the — day of, &c.

Order of Discharge by the Chief Justice, and two of his Assistants.

South-Carolina, } ff. At a Court of General Sessions of the Peace,
Oyer and Terminer, Assize and General
Goal Delivery, begun and holden at Charlestown the — day
of — Anno Domini — and in the — year of his Majesty's
reign, before the Honourable — chief justice and his as-
sociates justices of our sovereign Lord the King,

It is ordered as followeth,

UPON the petition of A. P. apprentice to A. M. of — carpenter, to be relieved upon certain neglects of the said master, in instructing him in his trade, and in misusing and evil intreating the said apprentice by cruel punishment (or as the case shall be) and the said master having likewise appeared upon his recognizance taken before I. P. to answer to the complaint of the said petition, and having proved nothing whereby to clear himself of the said complaint, but on the contrary the said A. P. having given full proof of the truth of the said complaint to the satisfaction of the said court: We therefore, whose hands and seals are hereunto set, do hereby order, pronounce and declare, that the said apprentice shall be, and is hereby discharged and freed from his said ap-

Arrest.

apprenticeship; and this to be a final order betwixt the said master and apprentice, any thing contained in their indentures of apprenticeship, or otherwise, to the contrary notwithstanding. Given under our hands and seals the day and year first above written.

Arrest.

This is to be understood in criminal cases only, and not in civil cases, and doth signify the restraint of a man's person, depriving him of his own will and liberty, and binding him to become obedient to the will of the law; and it may be called the beginning of imprisonment. *Lamb. 93.*

- I. Who may, or may not be arrested.
- II. For what causes of Suspicion an Arrest may be.
- III. By whom the Arrest shall be made.
- IV. The Manner of an Arrest.
- V. What is to be done after the Arrest.

I. *Who may, or may not be arrested.*

1. **G**ENERALLY a member of parliament shall have the privilege of parliament for himself and his servants, to be freed from arrests: But for treason, felony, and breach of the peace, there can be no privilege. 4. *Inst. 24, 25.* Members of assembly in this province are also freed from arrest in civil cases.

2. None shall arrest priests or their clerks, or other persons of holy church, whilst they attend to divine service, in churches, church-yards, or other places dedicated to God, on pain of imprisonment and ransom at the king's will, and he shall also make gree to the parties arrested. 2. *R. 2. c. 15.*

3. A warrant executed against any person whatsoever, on the Lord's-day is void; and the persons serving the same shall suffer damages, as if they had done the same without warrant, except in cases of treason, felony, and breach of the peace. 29. *C. 2. c. 7. 1. 6.*

II. *For*

II. For what Causes of Suspicion an Arrest may be.

BY the statute of 34. *Edw. 3. c. 1.* Power is given to the justices of the peace to arrest all those, against whom informations upon oath, or grounds of suspicion lay, and to put them in prison.

1. The being found in such circumstances, as induce a strong presumption of guilt, as coming out of a house wherein murder hath been committed, with a bloody knife in one's hand; or being found in possession of any goods stolen, without being able to give a probable account of coming honestly by them. 2 *H. 76.*

2. The behaving one's self in such a manner as betrays a consciousness of guilt; as where a man accused of felony, on hearing that a warrant is taken out against him, doth abscond. 2 *Haw. 76.*

3. The being found in company with one known to be an offender, at the time of the offence, or generally at other times, keeping company with persons of scandalous reputation. 2. *Haw. 76. 2. Inst. 52.*

4. The living an idle, vagrant and disorderly life, without having any visible means to support it. 2. *Haw. 76.*

5. The being pursued by hue and cry. 2. *H. 76.*

For if a felony is done, and one is pursued upon hue and cry that is not of ill fame, suspicious, unknown, nor indicted, he may be attached and imprisoned by the law of the land. 2. *Inst. 52.*

But generally no such cause of suspicion, as any of the above-mentioned, will justify an arrest, where in truth no such crime hath been committed, unless it be in the case of hue and cry. 2. *Haw. 76.*

III. By whom the Arrest shall be made.

1. **I**N criminal cases a person may be apprehended and restrained of his liberty, not only by process out of some court, or warrant from a magistrate, but frequently by a constable, or private person, without any warrant or precept.

2. Thus all persons who are present when a felony is committed, or a dangerous wound given, are bound to apprehend the offender, on pain of being fined and imprisoned for their neglect. 2. *Hawk. 74.*

Also

Arrest.

Also every private person is bound to assist an officer demanding his help for the taking of a felon, or the suppressing an affray. 2. *Haw.* 75.

3. A Constable may, *ex officio*, arrest a breaker of the peace in his view, and keep him in his house, or other place of security, till he can bring him before a justice.

4. Any Person whatsoever, if an affray be made, to the breach of the king's peace, may without any warrant from a magistrate, restrain any of the offenders to the end the King's peace may be kept, but after the affray is ended, they cannot be arrested without an express warrant. 2. *Inst.* 52.

So much concerning an arrest without a warrant; next follows arresting by warrant.

5. The warrant is ordinarily directed to the provost-marshal or constable; and they are indictable, and subject thereupon to a fine and imprisonment, if they neglect or refuse it. 1 *H. H.* 581.

6. If it be directed to the provost-marshal, he may command his deputy, or other sworn and known officer to serve it, without writing any precept. But if he will command another man, that is no officer to serve it, he must give him a written precept, otherwise false imprisonment will lie. *Lamb.* 89.

7. If a warrant be generally directed to all constables, no one can execute it out of his own precinct; for in such case it shall be taken respectively to each of them, within their several districts, and not to one of them to execute it within the district of another: but if it be directed to a particular constable by name, he may execute it any where within the jurisdiction of the justice, but is not compellable to execute it out of his own district. 2. *H.* 86.

8. The justice that issues the warrant may direct it to a private person if he pleaseth, and it is good; but he is not compellable to execute it, unless he be a proper officer. 1 *H. H.* 581.

9. By the justice's oath, the warrant ought not to be directed to the party, but to some indifferent person to execute it.

10. If a warrant is directed to two or more jointly, yet any one of them alone may execute it. *Dalt.* 169.

IV. *The Manner of an Arrest.*

1. **T**HE officer to whom a warrant is directed and delivered ought with all speed and secrecy to find out the party, and then to execute the warrant. *Dalt. c. 169.*

2. It is an offence of a very high nature to oppose one who lawfully endeavours to arrest another for treason or felony: and it seems the person who so opposes an arrest for treason, whereof he knows the party to have been guilty, is thereby guilty of the treason; and that he who so opposes an arrest for felony is an accessory to the felony. 2. *Haw. 121.*

3. A private person cannot raise power to arrest or detain a felon; but any justice may take of the county any number that he shall think meet to pursue, arrest, and imprison traitors, murderers, robbers, and other felons, or such as do break or go about to break or disturb the king's peace; and every man being required ought to assist and aid them, on pain of fine and imprisonment. *Dalt. c. 171.*

4. In breaking open doors, in order to apprehend offenders, it is to be observed that the law doth never allow of such extremities but in cases of necessity, and therefore no one can justify the breaking open another's doors to make an arrest, unless he first signify to those in the house the cause of his coming, and request them to give him admittance. 2 *H. 86.*

But where a person authorised to arrest another who is sheltered in a house, is denied quietly to enter into it, in order to take him, he may justify breaking open the doors in the following instances:

1. Upon a *Capias* grounded on an indictment for any crime whatsoever; or upon any *Capias* from the Chancery or King's Bench, to compel a man to find sureties for the peace or good behaviour. 2 *Haw. 86.*

2. Where one known to have committed a treason or felony, or to have given another a dangerous wound, is pursued either with or without a warrant, by a constable or private person; and upon a warrant for probable cause of suspicion of felony, the person to whom such warrant is directed may break open doors to take the person suspected, if upon demand he will not surrender himself, as well as if there had been an express and positive charge against him. 2. *H. H. 117.*

E

3. Upon

Arrest.

3. Upon a warrant from a justice of the peace to find sureties for the peace or good behaviour. 2. *Haw.* 86.

And in general, an officer upon a warrant from a justice, either for the peace or good behaviour, or in any case where the King is a party, may by force break open a man's house to arrest the offender. *Dalt. c.* 169.

4. On a warrant to search for stolen goods the doors may be broke open, if the goods are there, and if they are not there the constable seems indemnified; but he that made the suggestion is punishable. 2. *H. H.* 151.

5. Where an affray is made in a house, in the view or hearing of the constable, he may break open the doors to take them. 1. *Haw.* 137.

6. If there be disorderly drinking or noise in a house at an unreasonable time of night, especially in inns or taverns, the constable demanding entrance and refused, may break open the doors to see and suppress the disorder. 2. *H. H.* 95.

7. Wherever a person is lawfully arrested for any cause, and afterwards escapes and shelters him in a house. 2. *Haw.* 87.

8. If an officer to serve any warrant enters into a house, the doors being open, and then the doors are locked upon him, he may break them open, in order to regain his liberty. 2. *Haw.* 87.

If there be a warrant against a person for a trespass or breach of the peace, and he flies and will not yield to the arrest, or being taken makes his escape, if the officer kills him it is murder. 2. *H. H.* 117.

But if such person, either upon the attempt to arrest, or after the arrest, assault the officer, to the intent to make his escape from him, and the officer standing upon his guard kills him, this is no felony; for he is not bound to go back to the wall, as in common cases of *se defendendo*, for the law is his protection. 2. *H. H.* 118.

Where a warrant issueth against a person for felony, and either before arrest or after he flies and defends himself with stones or weapons, so that the officer must give over his pursuit, or otherwise cannot take him, without killing him, if he kill him it is no felony: and the same law is for a constable that doth it by virtue of his office, or in huy and cry. 2. *H. H.* 118. But there must be these cautions:

1. He must be a lawful officer, or there must be a lawful warrant.

2. The party ought to have notice of the reason of the pursuit, namely, because a warrant is against him.

3. It must be a case of necessity, namely, that he cannot otherwise be taken. 2. *H. H.* 119.

A private person may arrest a felon, and if he fly so as he cannot be taken without he be killed, it is excusable in this case for the necessity; yet it is at his peril, that the party be a felon, for if he be innocent of the felony, the killing (at least before the arrest) seems at least manslaughter; for an innocent person is not bound to take notice of a private man's suspicion.

2. *H. H.* 119.

A constable sworn and commonly known, and acting within his own district, need not shew his warrant, but he ought to acquaint the party with the substance of it. 2. *Haw.* 85.

If the party arrested do escape, the officer upon fresh suit may take him again and again, so often as he escapeth, although he were out of view, or that he shall fly into another town or county.

V. What is to be done after the Arrest.

1. **W**HEN a private person hath arrested a felon, or one suspected of felony, he may, with as much speed as he conveniently can, deliver him to the constable, or carry him immediately to a justice of peace. 1. *H. H.* 589.

2. If the arrest is by virtue of a warrant, when the officer has made the arrest, he is forthwith to bring the party according to the direction of the warrant. If it be to bring the party before the justice who granted the warrant specially, then the officer is bound to bring him before the same justice; but if the warrant be to bring him before any justice of the county, then it is in the election of the officer to bring him before what justice he thinks fit, and not in the election of the prisoner.

1. *H. H.* 582. 2. *H. H.* 112.

And when he hath brought him to the justice, yet he is in law still in his custody, till the justice discharge, or bail, or commit him. 2. *H. H.* 120.

Assault and Battery.

- I. Assault what.
- II. Battery what.
- III. In what cases they may be justified.
- IV. How punished.

I. *Assault what.*

ASSAULT is an attempt or offer, with force and violence, to do a corporal hurt to another, as by striking at him with or without a weapon, or presenting a gun at him at such a distance to which the gun will carry; or pointing a pitchfork at him, standing within the reach of it; or by holding up one's fist at him; or by any other such like act, done in an angry threatening manner. 1. *Haw.* 133.

And from hence it clearly follows, that one charged with an assault and battery, may be found guilty of the assault, and yet acquitted of the battery; but every battery includes an assault, therefore, on an indictment of assault and battery, in which the assault is ill laid, if the defendant be found guilty of the battery it is sufficient. 1. *Haw.* 134.

II. *Battery what.*

BATTERY is the wrongful beating and wounding of another, be the injury never so small, as by spitting in his face, or any way touching him in anger, or violently jostling him out of the way, and the like. 1. *Haw.* 134.

III. *In what Cases they may be justified.*

A Person may justify an assault in defence of his person, or of his wife, or master, or parent, or child within age, and even a wounding may be justified in defence of his person, but not of his possessions. 3. *Salk.* 46.

Also if an officer having a lawful warrant, lay hands on another to arrest him, or if a parent in a reasonable manner chastise his child, a master his servant, a school-master his scholar, a goaler his prisoner, and any person over his kinsman being lunatick, and attempting to do mischief. 1. *Haw.* 130.

Like.

Likewise a person may justify the assault and battery of another, who doth menace or assault him, and attempt to beat him from the highway. *Pult.* 42.

Also, if a person comes into my house, and will not go out, I may justify laying hold of him, and turning him out. *Nelf. Assault.*

And where a man in his own defence beats another who first assaults him he may take advantage thereof, both upon an indictment, and upon an action, with this difference, that on an indictment he may give it in evidence upon the plea of not guilty, but on an action he must plead it specially. 1. *Haw.* 134.

IV. *How punished.*

THERE is no doubt but that the wrong-doer is subject both to an action at the suit of the party, wherein he shall render damages, and also to an indictment at the suit of the King, wherein he shall be fined according to the heinousness of the offence. 1. *Haw.* 134..

Warrant for an Assault.

Berkley } ff. By I. P. one of his Majesties justices of the peace
County, } in and for the said county.

To any lawful Constable.

WHEREAS complaint hath been made unto me upon the oath of A. I. of ——— parish in said county, taylor, That A. O. of ——— butcher, did on the — day — violently assault and and beat him the said A. I. at ——— aforesaid, in the county aforesaid; These are therefore in his Majesty's name to command you forthwith to apprehend the said A. O. and to bring him before me to answer unto the said complaint, and to be further dealt withal.

Given under my hand and seal the ——— day of ———, &c..

Atward.

Award.

It is judged not foreign to the office of a keeper of the peace to have some knowledge of the law contained under this title, concerning which we will shew.

- I. What things may be submitted to Arbitration.
- II. The several kinds of Submission to Arbitration.
- III. The Award ; and therein what shall be deemed a good Award, and what not.

I. *What things may be submitted to Arbitration.*

1. **I**T is held clearly, that all matters of controversy, either of fact, or of a right in things, and actions personal and uncertain, may be submitted to arbitration. 9. Co. 78.

2. All matters of freehold, or any right and title to a freehold, cannot be submitted to arbitrament; for a freehold is not transferable from one to another, without livery and seisin; yet if there be a submission concerning the right, title, or possession of lands and tenements, and the parties enter into mutual bonds to stand to the award relating to them, they forfeit their bonds unless they obey it. 1. Rolls Abr. 242.

3. A thing certain, as a debt due by bond or record, an annuity and the like, cannot be submitted otherwise than by writing, and it is most adviseable that the parties enter into bonds. 1. Rolls Abr. 264.

4. Criminal matters, as treasons, murders, felonies, and other offences indictable at the suit of the king, cannot be submitted to arbitrament; for it is for the good of the commonwealth that such offenders be made known and punished: and the king in such cases is a party, for whom the other parties cannot undertake.

But if the party injured proceeds by way of action, as he may in assaults and batteries, libels, and the like, the damages he sustained or expects to recover, may be submitted to arbitration: for in such case the action is for himself, and not for the king. *Compleat Arbitrator* 28.

5. Also matrimonial causes, or any thing concerning the contract or dissolution of marriage, cannot be submitted to arbitrament. 1. Rolls Abr. 252.

But

But the damages a person sustained by a promise of marriage, or any thing relating to a marriage-portion, may be submitted.

II. *The several Kinds of Submission to Arbitration.*

1. **A** Submission by words is good, and the party in whose favour the award is made, hath a remedy to enforce a performance of it; yet it is not expedient that any submission should be by parol, because the party may revoke it at pleasure, at any time before the award made, and that by word likewise; and the judges will rarely enforce the performance of an award, when either the submission or the award is by parol, because it lays so great a foundation for perjury. *Comp. Abr. 21.*

3. Submission by rule of court is made in pursuance of the statute 9. & 10. *W. c. 15.*

4. Submission by bond, each party must give to the other bond, which bond and condition must contain exactly the same words, only changing the names of the parties; and the penalty of the bond should at least be the value of the thing submitted, so that the party may rather abide by the award than forfeit his obligation. *Comp. Abr. 46.*

5. Sometimes the submission is both by bond and rule of court, by adding the parties consent at the bottom of the condition of the bond; and seems to be the best way, for then the party may proceed which way he pleases, either upon the bond or attachment for contempt, and it is said he may proceed both ways. *1 Salk. 73.*

6. In which way soever the submission is made, it may be revoked, though made irrevocable by the strongest words; for a man cannot by his own act, make such authority and power not countermandable, which by the law, and in its own nature, is countermandable. *8. Co. 82.*

But if the submission be by bond, if the party revokes he forfeits his obligation, for he hath broken the words of the condition, which are, that he shall stand to, and abide the award. And if he revokes, he must give notice of the revocation; and if the submission was by bond, the revocation must be in writing. *8. Co. 82.*

III. *The Award; and therein what shall be deemed a good Award, and what not.*

1. **T**H E arbitrators cannot enjoin an oath to the witnesses, there being no law which gives them any such power.

2. It is highly convenient that the award be in writing, and so to be mentioned in the submission. *Compl. Arbr.* 34.

3. One thing essential to a good award is, that it be made with respect to persons and things according to the submission. *Wood, b. 4. c. 3.*

Upon which ground, as the arbitrators are, with respect to the things submitted, circumscribed, and tied down to the submission, it is most adviseable to award releases to the time of the submission, though releases awarded to the time of the award shall be good, unless it be shewn that some new matter hath arisen betwixt the parties, between the submission and the award. *1. Rolls Abr.* 242.

If the submission be, so as the award be ready to be delivered to the parties, or to such of them as shall desire the same, the parties so bound are themselves obliged to take notice of the award at their peril; but if the words of the submission be, so that the award be delivered to each party by such a day, then it must be delivered to each party accordingly. *Wood. b. 4. c. 3.*

4. It is required that the award be beneficial, and appoint something advantageous to either party; for an award of one side only, is not good; so if an award be that one of the parties shall go to *Rome*, when it appears there is no advantage to the other party by his going, it is void. *Wood b. 4. c. 3.*

So if a man and woman submit themselves to an award, it is no good award that they shall intermarry, for this is not intended any advantage. *1. Rolls Abr.* 252.

5. It is required in a good award that it be possible and lawful. *Wood b. 4. c. 3.*

Thus if an award be, that one of the parties shall steal, forge a deed or the like, it is void. *1. Inst.* 206.

Also it is held, that where a thing is awarded to be done, which afterwards becomes impossible by the act of God, the party is excused; as if an award be, to deliver a horse before such a day, and he dies before that day. *21 Ed.* 4. 70.

6. It

6. It is required that the award be certain and final, for the arbitrators cannot reserve any thing for their future judgment, when the time allowed them is expired, for then their award is not certain and final. *Cro. Tac.* 585.

7. Any arbitration or umpirage procured by corruption, or undue means, shall be deemed void, and may be set aside by a court of law or equity. 9 & 10 *W. c.* 15.

But generally as the arbitrators are persons of the parties own chusing, and as the law presumes every man will be so wise as to pitch upon a person whose understanding and honesty he can rely on, it hath seldom happened that an award was held void, when there appeared nothing else to vitiate it, especially in a court of law: but awards are often set aside, in a court of equity, for corruption and want of understanding in the arbitrators. *Compl. Arbr.* 73.

Therefore it is the interest of both parties to chuse men of honesty and understanding to be their arbitrators, and to acquaint them truly with the facts they are to go upon; for if they appear to be mistaken in a matter of fact, a court of equity will set aside the award. 2. *Vern.* 705.

8. When the arbitrators award a thing to be done, it is proper they appoint a time and place for the doing of it, and the party who would take advantage of it must shew that he has done what was requisite on his part; but if a thing is to be done generally, without mentioning time and place it shall be done immediately. 2. *Brown.* 311.

9. If a sum of money be awarded to one of the parties, and that upon the payment thereof they both shall give mutual releases; if he who is to receive the money refuse it, yet upon a tender and refusal he is as much obliged to sign a release as if he actually received it. 1 *Salk.* 75.

A Form of a Submission.

WHEREAS divers disputes and controversies have arisen,
and are now depending, between A. B. of — in the
county of — yeoman, of the one part, and C. D. of — of
the said county yeoman, of the other part, touching and concerning
—. Now, for the ending and deciding thereof, it is hereby
mutually agreed by and between the said parties, that all matters
in difference between them, for, touching, and concerning, all and
F every

Award.

every the matters and things herein above specified and particularly mentioned, shall be referred and submitted to the arbitrament, final end and determination, of A. A. of --- in the said county gentleman, B. A. of - - in the said county, yeoman, and C. A. of ---- in the said county yeoman, or any two of them arbitrators, indifferently elected by the said parties, so as the said arbitrators, or any two of them, do make and publish their award in writing, ready to be delivered to the said parties, or such of them as shall desire the same, on or before the --- day of --- next ensuing the date hereof. (If there is a rule of court, add, "And it is hereby mutually agreed by and between the said parties, that this submission shall be made a rule of his Majesty's court of Common Pleas, &c. at Charlestown.") In witness whereof the said parties to these presents have hereunto set their hands this --- day of --- &c.

Arbitration Bond.

KNOW all men by these presents that I A. B. of ---- in the county of ---- gentleman, am held and firmly bound to C. D. of ---- in the said county of ---- yeoman, in ---- pounds of good and lawful money of Great-Britain, to be paid unto the said C. D. or to his certain attorney, his executors, administrators, or assigns. To which payment well and truly to be made, I bind myself, my heirs, executors and administrators, firmly by these presents. Sealed with my seal, and dated the ---- day of ---- in the ---- year of the reign of our sovereign lord George the Second, of Great-Britain, France, and Ireland, king, defender of the faith, and so forth, and in the year of our lord ----

Condition to stand to the Award of two Arbitrators in common Form.

THE condition of the above obligation is such, That if the above-named A. B. his heirs, executors and administrators, and every of them, for and on his and their parts and behalfs, do, and shall well and truly stand to, obey, abide by, perform, observe and keep the award, order, arbitrament, final end and determination of A. A. of ---- Esq; B. A. of ---- gentleman, arbitrators indifferently named, elected and chosen, as well for, and on the part and behalf of the above-bound A. B. as of the above-named

named C. D. to arbitrate, award, order, adjudge and determine of and concerning all and all manner of action and actions, cause and causes of action and actions, suits, bills, bonds, specialties, judgments, executions, extents, accounts, debts, dues, sum and sums of money, quarrels, controversies, trespasses, damages, and demands whatsoever, both in law and equity, or otherwise howsoever, which at any time or times heretofore have been had, made, moved, brought, commenced, sued, prosecuted, committed, omitted, done, or suffered by or between the said parties, so as the said award be made in writing, and ready to be delivered to the said parties, on or before the ---- day of ---- now next ensuing, then this obligation to be void, otherwise of force. (If an umpire is thought necessary and agreed to by both parties, then add the following clause :) "And if the said arbitrators shall not make such their award of and concerning the premisses within the time limited as aforesaid, then if the said A. B. his heirs, executors and administrators, for and on his and their part and behalf, do, and shall well and truly stand to, observe, perform, fulfil and keep the award, determination and umpirage of ----, being a person indifferently named and chosen between the said parties for umpire in and concerning the premisses, so as the said umpire do make and set down his award and umpirage in writing, under his hand and seal, ready to be delivered to the said parties in difference on or before the ---- day of ---- next ensuing." Then this obligation to be void, otherwise of force, &c.

Form of an Award.

To all to whom these presents shall come. We A. B. of ---- and C. D. of ---- do send greeting.

WHEREAS there are several accounts depending, and divers controversies have arisen, between ---- of ---- yeoman, of the one part, and ---- of ---- yeoman, of the other part; and whereas, for the putting an end to the said differences, they the said ---- and ---- by their several bonds or obligations bearing date ---- last past, are reciprocally become bound each to the other in the penal sum of ---- to stand to, abide by, perform and keep the award, order and final determination of us the said ---- so as the award be made in writing, and ready to be delivered to the parties in difference on or before ---- next ensuing, as by the said obligations and conditions thereof may appear: Now know ye, that we

Award.

the said arbitrators, whose names are hereunto subscribed, and seals affixed, taking upon us the burden of the said award, and having fully examined and duly considered the proofs and allegations of both the said parties, do make and publish this our award, between the said parties, in the manner following: (that is to say) First, we do award and order, that all actions, suits, quarrels, and controversies whatsoever, had, moved, arisen, and depending between the said parties in law or equity, for any manner of cause whatsoever, touching the said premisses, to the day of the date hereof, shall cease and be no further prosecuted; and that each of the said parties shall pay and bear his own cost and charges in any wise relating to or concerning the premisses. And we do also award and order, that the said ----- shall deliver, or cause to be delivered to the said -----, within the space of -----, &c. And further, we do hereby award and order, that the said ----- shall, on or before ----- pay or cause to be paid unto the said ----- the sum of ----- We do also award and order, &c. (as the case shall require).

And lastly, we do award and order, that the said ----- and -----, on payment of the said sum of ----- shall in due form of law, execute each to the other of them, or to the other's use, general releases sufficient in the law for the releasing by each to the other of them, his heirs, executors and administrators, of all actions, suits, arrests, quarrels, controversies, and demands whatsoever, touching or concerning the premisses aforesaid, or any matter or thing thereunto relating, from the beginning of the world until the ----- day of ----- last past (viz. the day of date of the arbitration bonds). In witness whereof we have hereunto set our hands and seals the ---- day of -----, &c.

Form of an Umpirage.

(Recite the Arbitration Bonds as before)

NOW know ye, that I ----- umpire, indifferently chosen by ----- having deliberately heard and understood the grievances, allegations, and proofs of both the said parties, and willing (as much as in me lieth) to set the said parties at unity and good accord, do by these presents arbitrate, award, order, decree, and judge as followeth, that is to say, &c.

Bail.

Bail.

- I. What it is.
- II. Difference between Bail and Mainprise.
- III. When a Person may be discharged without Bail.
- IV. Who may or may not be bailed.

I. *What Bail is.*

BAIL signifies the delivery of a man out of custody, upon the undertaking of one or more persons for him, that he shall appear at a day limited to answer and be justified by the law. *Hale's Pl. 96.*

II. *Difference between Bail and Mainprise.*

THE difference between bail and mainprise is, that mainpernors are only surety, but bail is a custody; and therefore the bail may retake the prisoner, if they doubt he will fly, and detain him, and bring him before a justice, and the justice ought to commit the prisoner in discharge of the bail, or put him to find new sureties. *Hale's Pl. 96.*

III. *When a Person may be discharged without Bail.*

IF a person be brought before a justice, and it appears that no misdemeanour, or felony, is committed, he may be discharged; but if a misdemeanour or felony be committed, though it appears not that the party accused is guilty, yet he cannot be discharged.

IV. *Who may or may not be bailed.*

JUSTICES of this province have no power to hear, try, or determine any crimes against the common or statute law of *England*, extending to or made of force in this province, nor against the acts of assembly, therefore they ought to be very cautious in bailing offenders; for if they bail any person not bailable, they may be fined by the justices of the general sessions, of the peace, assize, &c. or prosecuted at law for a negligent escape:
and

and if bail be refused where the person is bailable, it is not only a misdemeanour and fineable, but also an action lies against the justice.

Persons charged with treason, murder, felony, and all other crimes where life or member is concerned, whether they be principals or accessaries, are not bailable by justices of the peace.

But when justices send any criminal to goal, they ought in their mittimus to mention the cause of the committment, to the end it may appear whether such person be bailable or not.

Persons charged with any trespasss, not concerning life or member, are bailable.

But before the bailment of such prisoner, the justice shall take the examination of the prisoner, and information of them that charge him, touching the fact and circumstances of the crime, which must be put in writing before the bailment. And the informer must enter into recognizance to appear at the sessions to prosecute or give evidence (as the case shall be) which examination, information and recognizances, being certified by the justice, must be by him transmitted to the clerk of the crown and peace.

Form of a bail Bond or Recognizance.

Berkley } ff. *BE it remembered, that on the — day of — in the*
County, } *year of the reign of — A. O. of — yeoman,*
A. B. of — yeoman, and B. B. of — yeoman, came before
me I. P. Esq; one of his Majesty's justices of the peace in and for
the said county, and severally acknowledged themselves to owe to
our said lord the King, that is to say, the said A. O. 50 l.
proclamation-money of America, and the said A. B. and B. B.
25 l. like money each, to be respectively levied off their lands and
tenements, goods and chattels, if the said A. O. shall make default
in the performance of the condition underwritten.

The condition of this recognizance is such, that if the above-
bound A. O. shall personally appear before his Majesty's justices at
the next court of general sessions of the peace, oyer and terminer,
assize, and general goal delivery, to be holden at Charlestown on
the third Wednesday of — next, then and there to answer
to our said sovereign lord the king for and concerning — whereof
the said A. O. stands charged, and to do and receive what shall by
the court be then and there enjoined him, and shall not depart the
court

court without licence, then the above recognizance shall be void, otherwise shall remain in full force.

Taken and acknowledged the day and year above written, before me I. P.

Barratry.

I. What it is.

II. How punished.

I. What it is.

BARRATRY is an offence of a complicated nature, consisting in the repetition of divers acts, in disturbance of the peace, in taking or keeping of possession of lands in controversy, not only by force, but also by subtilty and deceit, and most commonly in the suppression of truth and right, by false inventions, rumours and reports, whereby discord and disquiet may grow between neighbours: and a barrator doth signify a common mover, exciter, or maintainer of suits, or quarrels, either in courts or in the country. 1. Inst. 368.

II. How punished.

JUSTICES of the peace, upon receiving information upon oath, against any person for barratry, shall issue his warrant for apprehending such person, and when apprehended shall bind him over to the next general sessions of the peace, assize, &c. with sureties, where he may be fined, imprisoned, and bound to his good behaviour.

Warrant for a Barrator.

Berkley } ff. By I. P. one of his Majesties justices of the peace
County, } for the county aforesaid.

To any lawful Constable of the said County.

WHEREAS complaint upon oath hath been made unto me, that A. O. of — in the said county, yeoman, on the — day of —, and on divers other days and times, as well before

Bastards.

as afterwards, at ——— in the county aforesaid, was and yet is a common barrator, and daily disturber of his Majesty's peace, to the great damage and disturbance of his Majesty's liege people, and to the evil example of all others in the like case offending; These are therefore to command you forthwith to bring the said A. O. before me, to answer unto the said complaint, and to find sureties for his personal appearance at the next general sessions of the peace. Hereof fail not. Given under my hand and seal ---- day of, &c.

Bastards.

I. Who are Bastards.

II. How the Mother and the Father of a Bastard are to be proceeded against.

I. Who are Bastards.

A BASTARD is one born out of lawful wedlock, whether of a single woman or where a man marries a second wife, the first still living, and the second have issue, that issue is a bastard: children which a woman has before a divorce *a vinculo matrimonii*, or after a separation *a mensa & thoro*, are likewise bastards, unless it can be proved that the husband had access to her; but if a man marry a woman big with child by another who was not her husband, the child in such case is no bastard.

II. *How the Mother and the Father of a Bastard are to be proceeded against.*

A. A. 1703.

E N A C T S, that when a justice of the peace shall receive information of any woman being with child of a bastard, he must issue his warrant to convene such woman before him, and examine her upon oath who is the father of such bastard child; and if he has reason to believe her to be with child he must bind her by recognizance in the sum of twenty pounds, proclamation-money, with two sufficient sureties in ten pounds each, that she shall appear at the next sessions of goal delivery, and for want of such security shall commit her to prison. And if she is convicted by confession, or verdict of the jury, for the first

first offence she shall be fined, not exceeding ten pounds, and not less than five pounds, proclamation-money; and in case of failure of payment shall be publicly whipped on the bare back, at the usual places in Charlestown, not exceeding thirty-one stripes; and for the second offence shall be fined, not exceeding fifteen pounds, and not less than ten pounds, and in failure of payment shall be publicly whipped as aforesaid; and for the third offence shall be tied to the tail of a cart and publicly whipped through as many streets in Charlestown, as the chief judge of the general sessions shall order, and the like punishment for every time she shall offend in the like kind.

If a woman, upon her examination, accuse any person upon oath to be the father of the bastard child with which she goeth, the justice must issue his warrant to convene such person before him, and shall bind him by recognizance in the sum of twenty pounds, proclamation-money, with two sufficient sureties in ten pounds each, that he shall appear at the next general sessions and goal delivery, and in case such security is not given he shall be committed.

He that is accused by any woman to be the father of a bastard child, begotten of her body, she continuing constant in such accusation, being examined upon oath, and put upon the discovery of the truth in the time of her travail, is adjudged the reputed father of such child, notwithstanding his denial, unless the pleas and proofs made and produced on the behalf of the man accused, and other circumstances be such, as the chief judge of the general sessions shall see reason to judge him innocent and acquit him thereof; but if he shall be adjudged to be the reputed father, then he shall be fined, not exceeding ten pounds, and not less than five pounds, and in failure of payment shall be publicly whipped as aforesaid.

If any woman, being with child of a bastard, shall refuse, when examined by a justice upon oath, to discover the father of her child, then the justice shall commit her to prison, there to continue without bail, till she shall discover who is the father of the child: and upon such discovery she shall be discharged, upon giving such security as first required, for her appearance at the general sessions, and shall then be publicly examined by the judge of the sessions touching the father of her bastard child, and in case of her then refusal to discover the father, she shall be fined forty pounds, and be continued in prison till the payment thereof;

Bastards.

and in case she shall continue in prison for the non-payment of the fine, till the next general sessions, after her being delivered of her child, then the judge of the sessions shall order her to be sold as a servant to any person that will pay the said fine for her, for any time not exceeding four years.

If any woman, upon her examination touching the discovery of the father of her bastard child, shall refuse to tell who the father is, he being then in the province, and afterwards she discovers the father when he is gone out of the province, and not return again at or before the next general sessions, after the woman is delivered of her bastard child, she shall be proceeded against as if she had not discovered the father at all.

If any woman accuse a person of being the father of her bastard child, and such person shall prove his innocence, and acquit himself of the charge, to the satisfaction of the judge of the general sessions, then the judge may impose a fine not exceeding twenty pounds upon the woman for such her false accusation, or order her to be publicly whipped.

Besides the fines imposed upon the mother and reputed father of a bastard child, if such child be living; the judge of the sessions will order the reputed father, if discovered, to pay weekly to the commissioners of the poor, or the church-wardens of Charlestown, so much as he shall think sufficient for the maintenance of the said bastard child, until it shall attain unto the age of ten years, and that it shall be nursed and kept by the mother during that time, and that the mother and reputed father shall jointly and severally keep the parish free from all charges whatsoever, for, or concerning the keeping of such bastard child; and in case the order so made by the judge shall not be observed, and complaint thereof made either to the judge, or to any two justices of the peace, the offending person or persons shall be committed to prison, there to abide till he or she shall give security to obey the said order; but if the mother or reputed father of such bastard child shall give sufficient security before the judge of the sessions, to indemnify the parish or province from any charges whatsoever, for, or touching the keeping of the same bastard child, then the aforesaid order shall not be made, or if made, become void.

If any woman shall be convicted at the general sessions of having a bastard child, a certificate of the record of such conviction of the mother shall be sufficient testimony of such child being

being a bastard, and shall be liable to all those disabilities that by the law of England bastards are liable to.

If any person who is an inhabitant of this province shall beget a bastard child, he having lawful issue of his own, either child, children, or grand-children living, and shall settle or convey, either in trust or by deed of gift, or by legacy or devise, or any other way whatsoever, the whole or any part of his estate real or personal, to the disinheriting of his lawful issue, all such conveyances, legacies and devises, are null and void; provided such settlement, gift, legacy or devise, do exceed One hundred pounds current money of South-Carolina.

If any woman, who has had a bastard child by any person in this province, shall at any time thereafter cohabit with the person by whom she hath had such bastard child, for every month she shall so cohabit with such person, excepting they are married, she shall forfeit Five pounds.

If any freeman of this province shall beget a woman servant with child, he shall, over and above the forfeitures, pains and penalties mentioned as aforesaid, pay unto the master or mistress of such servant, the sum of Five pounds; and in case of failure therein, shall serve the master or mistress of such servant double the time she had to serve at the time of the offence committed, or procure one in his stead so to do, provided the said double time doth not exceed one year. And in case one servant shall beget another with child, then the man servant shall after the expiration of his term serve the master or mistress of the woman servant double the time she had to serve at the time of the offence committed, provided the double time do not exceed one year.

A Warrant to bring a Woman suspected to be with Child of a Bastard, before a Justice of Peace, to be examined thereupon.

Berkley } ff. By I. P. one of his Majesty's Justices of the Peace
County, } for the said County.

To any lawful Constable of the said County.

WHEREAS complaint hath been made unto me this present day, by I. F. and other credible inhabitants of --- parish, that B. B. of the said parish, single woman, is now with child, which when born is likely to be a bastard, and chargeable to the

Bastards.

said parish; These are therefore in his Majesty's name strictly to command you, that you do bring the said B. B. before me, to be examined touching the premisses, and that you do likewise give notice to the several persons whose names are here under-written, that they and every of them are required to appear with the said woman before me, at my house at ---- in the said parish, on the ---- day of this instant ----, at ten o'clock in the forenoon, to testify their several knowledges touching the premisses, to the end that upon examination of the said matter, and the circumstances thereof, such order may be taken therein, as to justice doth appertain. Whereof fail not at your peril. Given under my hand and seal, &c.

Voluntary Examination of a Woman with Child of a Bastard.

Berkley } **THE** examination of B. B. of ---- in the said
County, } county, single woman, taken on oath before me I.
P. one of his Majesty's justices of the peace in and for the said
county this ---- day of ----, who saith that she is now with child,
and that the said child is likely to be born a bastard, and to be
chargeable to the parish of ---- in the said county, and that A. F.
of ---- in the said county, taylor, is the father of the said child.

Taken and signed before me the
day and year above written I. P.

The mark of
† B. B.

Examination after the Birth.

Berkley } **THE** examination of B. B. of --- in the said county,
County. } single woman, taken upon oath before me --- one of
his Majesty's justices of the peace in and for the said county, this
---- day of ----, who saith, that on the ---- day of ---- now last
past, at ---- in the parish of ---- in the county aforesaid, she
the said B. B. was delivered of a (male) bastard child, and that
the said bastard child is likely to become chargeable to the said pa-
rish of ----, and that A. F. of ---- in the said county, taylor,
did get her with child of the said bastard child.

Taken and signed the day and year
above written, before me I. P.

† B. B.

Warrant

Warrant to apprehend the reputed Father before the Birth.

Berkley } ff. By I. P. one of his Majesty's Justices of the Peace
County. } for the said County

To any lawful Constable for the same.

WHEREAS B. B. of ---- in the said county, single woman, bath by her voluntary examination, taken in writing upon oath before me this present day, declared herself to be with child, and that the said child is likely to be born a bastard, and to be chargeable to the parish of ---- in the said county, and that A. F. of ---- in the said county, taylor, is the father of the said child: I do therefore hereby command you immediately to apprehend the said A. F. and to bring him before me, or some other of his Majesty's justices of the peace for the said county, to find security for his appearance at the next general sessions of the peace, assize, &c. then and there to abide, and perform such order or orders as shall be made in pursuance of an act of assembly against bastardy. Given under my hand and seal the ---- day of, &c.

The like after the Birth.

Berkley } ff. By I. P. one of his Majesty's Justices of the Peace
County. } for the said County.

To any lawful Constable for the same.

WHEREAS B. B. of ---- in the said county, single woman, bath by her examination taken in writing upon oath before me, declared, That on the ---- day of ---- now last past, at ---- in the parish of ---- in the county aforesaid, she the said B. B. was delivered of a (male) bastard child, and that the said bastard child is likely to become chargeable to the said parish of ---- and bath charged A. F. of ---- in the said county, taylor, with having gotten her with child of the said bastard child, I do therefore hereby command you immediately to apprehend the said A. F. and to bring him before me, or some other of his Majesty's justices of the peace for the said county, to find security for his appearance at the next general sessions of the peace, assize, &c. then and there to abide and perform such order or orders as shall be made, in pursuance of an act of assembly against bastardy. Given under my hand and seal the ---- day of, &c.

Commit-

Commitment thereupon.

Berkley } ff. By I. P. one of his Majesty's Justices of the Peace
County. } for the County aforesaid.

To any lawful Constable for the same.

WHEREAS B. B. of ---- single woman, in her voluntary examination taken in writing, and upon oath the ---- day of ---- now last past before me, hath declared herself to be with child, and that the said child is likely to be born a bastard, and to be chargeable to the said parish of ----, and hath charged A. F. of ---- gentleman, with having gotten her with child of the said bastard (or if it is after the birth then say, *Whereas* B. B. of ---- single woman, in her examination taken in writing upon oath before me, hath declared, that on the ---- day of ---- now last past, at ---- in the parish of ---- in the county aforesaid, she the said B. B. was delivered of a (male) bastard child, and that the said child is likely to become chargeable to the said parish of ----, and hath charged A. F. of ---- gentleman, with having gotten her with child of the said bastard child) and whereas the said A. F. being now personally present before me, and hath refused to enter into a recognizance with sufficient surety for his appearance at the next general sessions of the peace, assize, &c. and to abide and perform such order or orders as shall then and there be made, in pursuance of an act of assembly against bastardy. These are therefore to command you the said constable, to take and convey the said A. F. to the common goal of Charlestown, and to deliver him to the keeper thereof, together with this warrant. And I do hereby command you the said keeper of the said goal, to receive the said A. F. into your custody and goal, and him there safely keep until he shall be from thence delivered according to law. Given under my hand and seal this --- day of, &c.

Condition of a Recognizance for the Father or Mother to appear at the General Sessions of the Peace, Assize, &c.

THE condition of this recognizance is such, That if the above bounden A. F. do and shall appear before his Majesty's justices at the next general sessions of the peace, assize, &c. to be holden at Charlestown the third Wednesday in the month of ---- next, and shall then and there abide and perform such order or orders

as shall be made, in pursuance of an act of assembly of this province against bastardy, whereof he the said A. F. stands charged, then this recognizance to be void, otherwise to remain and be of full force.

Taken and acknowledged the day and year above written, before me

If any woman be delivered of any issue of her body, male or female, which being born alive, should be a bastard, and she endeavour privately, either by drowning or secret burying thereof, or any other ways, either by herself, or procuring of others, so to conceal the death thereof, as that it may not come to light whether it was born alive or not, but be concealed, she shall suffer death as in case of murder, unless she can prove, by one witness at the least, that the child was born dead.

Where the woman appears to have concealed the death of her child, there is no need of any proof that the child was born alive, or that there were any signs of hurt upon the body, but it shall be undeniably taken that the child was born alive, and murdered by the mother. 2. *Haw.* 438.

But where a woman being in a room and knocks for help, or other ways endeavours to procure help when seized with the pains of labour, or where she confesses herself with child before hand, and afterwards be surprised and delivered, no body being with her; in such case it must appear by signs of hurt upon the body, or some other way, that the child was born alive. 2. *Haw.* 438.

If a woman be with child, and any gives her a potion to destroy the child within her, and she take it, and it works so strongly that it kills her, this is murder; therefore he that gives the potion to this end must take the hazard.

If a woman be quick, or great with child, if she take, or another give her any potion to make an abortion; or if a man strike her, whereby the child within her is killed, though it be a great crime, yet it is not murder or manslaughter, because it is not yet in *rerum natura*, nor can it be legally known, whether it were killed or not; so it is, if after such child were born alive, and after die of the stroke given to the mother, this is not homicide.

But if a man procure a woman with child to destroy her infant when born, and the child is born, and the woman, in pur-

Bigamy. Blasphemy and Profaneness.

purfuance of that procurement kill the infant, this is murder in the mother, and the procurer is accessary. 1 H. H. 433.

Bigamy.

BIGAMY signifies a double marriage, or marriage of two wives; but shall transfer the offence, which is commonly treated of under this title, under the title **Polygamy**, which signifies more properly the having two or more wives or husbands at the same time.

Blasphemy and Profaneness.

A. A. 1703.

ENACTS, That if any person professing the Christian religion, within this province, shall, by writing, printing, teaching, or advised speaking, deny any one of the persons of the Holy Trinity to be God, or shall assert there are more Gods than one, or shall deny the Christian religion to be true, or the Holy Scriptures of the Old and New Testament to be of Divine Authority, and shall upon indictment or information be thereof convicted before his Majesty's justices at the general sessions of the peace, assize, &c. such person shall, for the first offence, be disabled to have or enjoy any office or employment, ecclesiastical, civil or military, provided, acknowledgment and renunciation of such offence, or erroneous opinions, is not made in the same court where such person or persons was or were convicted, within the space of four months after conviction. And if any person be a second time convicted of the same offence, he is thenceforth disabled to sue, prosecute, plead, or use any action or information in any court of law or equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacy or deed of gift, or bear any office, civil, military or ecclesiastical, or be capable of being a member of assembly, for ever within this province, and shall also suffer imprisonment for the space of three years, without bail or mainprize. But no person shall be prosecuted for any words spoken, unless the information be given upon oath, before one or more justice or justices of the peace, within four days after the words spoken.

Bread.

Bread.

* **E**NACTS, that the commissary-general of this province, for the time being, and in case of his absence or sickness, the publick treasurer shall, upon the best information he can get, publish monthly, in the Gazette, the current price of fine flour at Charlestown, which price, so published, shall be deemed and taken, from time to time, as the ordinary price of such flour, for the month ensuing.

* A. A. 22
Geo. 2. 1749.

The commissary-general to publish the price of flour every month in the gazette.

Every common baker, or other person, who shall make or bake for sale, or expose to sale, any of the sorts of bread mentioned in the following table, shall fairly imprint or mark, or cause to be fairly imprinted or marked, on every loaf so by him or her made or exposed to sale, the price of such loaf, together with the initial letters of the name of the baker thereof, whereby the said baker, and price of such bread may be distinctly known, and shall make such bread agreeable to the weight in the following table, otherwise he, she, or they who shall be convicted to the contrary, by the confession of the party, or by the oath of one or more credible witness or witnesses, before one or more justices of the peace of the county where the offence shall be committed, shall, for every such offence, forfeit the sum of twenty shillings proclamation-money, to be levied by warrant under the justice or justices hands, and given to the informer or informers.

Every baker shall imprint on each loaf he makes, the initial letters of his name, and price of such loaf, &c.

If any baker put into any bread by him or her sold, or exposed to sale, any mixture of other grain, than that specified in the following table, further than what is absolutely necessary for the well making or baking thereof, shall, for every such offence, upon conviction before any justice or justices trying and examining the same, forfeit all such bread so fraudulently mixed, for the use of the poor of the parish where the offence shall be committed, and also the sum of twenty shillings proclamation-money for the use of the informer, to be recovered by warrant from the justice or justices as before mentioned; provided the prosecutions for such convictions be commenced within three days next after the offence is committed.

Bread made of a fraudulent mixture to be forfeited, &c.

Any one or more justice or justices of the peace, within their respective counties, may at all times in the day time, enter into any house, shop, stall, bake-house, ware-house, or out-house,

Justices may enter all bake-houses and seize all bread

not made according to the directions of this act.

Persons convicted of offences against this act may appeal, &c.

of or belonging to any baker or seller of bread, and there search for, view, weigh and try all, or any of the bread which shall there be found, and if any be found, either wanting in the goodness of the materials whereof the same shall be made, or deficient in the baking, or wanting in the due weight, or not truly marked, or fraudulently mixed, then and in every such case any justice or justices, within their respective counties, may seize such bread so found, and cause the same to be forthwith given and distributed to the poor of the parish where such seizure shall be made. And if any baker or seller of bread, shall not suffer such search and seizure to be made, or resist the same, he, she, or they so doing, shall, for every such offence, forfeit the sum of four pounds, proclamation-money, for the use of the poor of the parish where the offence is committed, to be levied by a warrant under the justice, or justices, hands.

But if any person convicted of any of the offences before mentioned, think him or herself aggrieved, he or she may, within three days after such conviction, appeal in writing to any three justices of the peace for the county where such conviction shall be made, by whom the same shall be heard and finally determined in ten days after such appeal. And if the person so appealing shall not make good his or her appeal, or prosecute it with effect, the justices shall award such costs as they shall think reasonable to the informer, and commit the offender to the common goal until he or she shall make payment of such costs, and also of the penalty adjudged on the conviction; the like reasonable costs shall be awarded to the appellant against the informer, if he does not duly support and make good his information.

Conviction and Warrant to levy the penalty and distribute the bread to the Poor.

Berkley }
County. } ff. To any lawful Constable of the said County.

WHEREAS A. I. of ---- in the said county, yeoman, came this day before me I. P. one of his Majesty's justices of the peace for the county aforesaid, and made information on oath that A. O. of ---- aforesaid baker, did this day expose to sale seven half crown loaves of bread, deficient in their respective due weights according to the assize of bread, established by an act of assembly

A TABLE of the Affize of BREAD, in Pounds, Ounces and Drams, Avoirdupoise Weight.

Price of fine Flour at Charlestown by the hundred, or five score pounds in current money.			Seven pence halfpenny Loaf, or Roll.			Fifteen Penny Loaf.			Half Crown Loaf.			Crown Loaf.		
			White.	Wheaten.	Household.	White.	Wheaten.	Household.	White.	Wheaten.	Household.	White.	Wheaten.	Household.
L.	s.	d.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.
2	0	0	1 0 8	1 8 12	2 1 0	2 1 0	3 1 8	4 2 0	4 2 0	6 3 0	8 4 0	8 4 0	12 6 0	16 8 0
2	0	0	0 15 10	1 7 7	1 15 4	1 15 4	2 14 14	3 14 8	3 14 8	5 13 12	7 13 6	7 13 6	11 11 8	15 10 0
2	5	0	0 14 12	1 6 2	1 13 8	1 13 8	2 12 4	3 11 0	3 11 0	5 8 8	7 8 0	7 6 0	11 1 0	14 12 0
2	10	0	0 13 14	1 4 13	1 11 12	1 11 12	2 9 10	3 7 8	3 7 8	5 5 3	7 4 4	6 15 0	10 6 8	13 14 0
2	15	0	0 13 14	1 4 13	1 11 12	1 11 12	2 9 10	3 7 8	3 7 8	5 5 3	7 4 4	6 15 0	10 6 8	13 14 0
3	0	0	0 13 0	1 3 8	1 10 0	1 10 0	2 7 0	3 4 0	3 4 0	5 4 14	7 6 8	6 8 0	9 12 0	13 0 0
3	0	0	0 12 4	1 2 6	1 8 8	1 8 8	2 4 12	3 3 3	3 3 3	5 9 9	7 12 0	6 12 0	9 3 3	12 4 0
3	5	0	0 12 4	1 2 6	1 8 8	1 8 8	2 4 12	3 3 3	3 3 3	5 9 9	7 12 0	6 12 0	9 3 3	12 4 0
3	10	0	0 11 8	1 1 4	1 7 0	1 7 0	2 2 8	3 2 14	3 2 14	5 8 5	7 10 8	6 10 8	9 2 10	12 0 0
3	15	0	0 10 12	1 0 2	1 5 8	1 5 8	2 0 4	3 1 11	3 1 11	5 7 4	7 9 8	6 9 8	9 1 12	11 12 0
4	0	0	0 10 0	0 15 0	1 4 0	1 4 0	2 0 0	3 0 8	3 0 8	5 6 12	7 8 0	6 8 0	9 0 12	11 0 0
4	0	0	0 9 3	0 14 4	1 3 0	1 3 0	2 0 0	3 0 6	3 0 6	5 6 6	7 7 4	6 7 4	9 0 6	11 0 0
4	5	0	0 9 9	0 13 8	1 2 0	1 2 0	2 0 0	3 0 2	3 0 2	5 6 0	7 6 8	6 6 8	8 11 12	10 8 0
4	10	0	0 8 8	0 12 12	1 1 0	1 1 0	2 0 0	3 0 0	3 0 0	5 5 0	7 5 8	6 5 8	8 10 12	10 0 0
4	15	0	0 8 8	0 12 12	1 1 0	1 1 0	2 0 0	3 0 0	3 0 0	5 5 0	7 5 8	6 5 8	8 10 12	10 0 0
5	0	0	0 8 0	0 12 0	1 0 0	1 0 0	2 0 0	3 0 0	3 0 0	5 4 0	7 4 8	6 4 8	8 9 12	10 0 0
5	0	0	0 7 12	0 11 10	0 15 8	0 15 8	2 0 0	3 0 0	3 0 0	5 3 14	7 3 8	6 3 8	8 8 12	10 0 0
5	5	0	0 7 8	0 11 4	0 14 8	0 14 8	2 0 0	3 0 0	3 0 0	5 3 8	7 3 2	6 3 2	8 8 6	10 0 0
5	10	0	0 7 4	0 10 14	0 14 0	0 14 0	2 0 0	3 0 0	3 0 0	5 3 2	7 2 8	6 2 8	8 8 0	10 0 0
5	15	0	0 7 4	0 10 14	0 14 0	0 14 0	2 0 0	3 0 0	3 0 0	5 3 2	7 2 8	6 2 8	8 8 0	10 0 0
6	0	0	0 7 0	0 10 8	0 14 0	0 14 0	2 0 0	3 0 0	3 0 0	5 2 0	7 2 0	6 2 0	8 7 12	10 0 0
6	0	0	0 6 14	0 10 5	0 13 12	0 13 12	2 0 0	3 0 0	3 0 0	5 1 14	7 1 8	6 1 8	8 7 6	10 0 0
6	5	0	0 6 12	0 10 2	0 13 8	0 13 8	2 0 0	3 0 0	3 0 0	5 1 8	7 1 2	6 1 2	8 7 0	10 0 0
6	10	0	0 6 10	0 9 15	0 13 4	0 13 4	2 0 0	3 0 0	3 0 0	5 1 2	7 1 0	6 1 0	8 6 12	10 0 0
6	15	0	0 6 10	0 9 15	0 13 4	0 13 4	2 0 0	3 0 0	3 0 0	5 1 2	7 1 0	6 1 0	8 6 12	10 0 0
7	0	0	0 6 8	0 9 12	0 13 0	0 13 0	2 0 0	3 0 0	3 0 0	5 0 14	7 0 8	6 0 8	8 6 6	10 0 0
7	0	0	0 6 7	0 9 10 1 2	0 12 14	0 12 14	2 0 0	3 0 0	3 0 0	5 0 10	7 0 4	6 0 4	8 6 0	10 0 0
7	5	0	0 6 6	0 9 9	0 12 12	0 12 12	2 0 0	3 0 0	3 0 0	5 0 8	7 0 2	6 0 2	8 5 12	10 0 0
7	10	0	0 6 6	0 9 9	0 12 12	0 12 12	2 0 0	3 0 0	3 0 0	5 0 8	7 0 2	6 0 2	8 5 12	10 0 0
7	15	0	0 6 5	0 9 7 1 2	0 12 10	0 12 10	2 0 0	3 0 0	3 0 0	5 0 4	7 0 0	6 0 0	8 5 8	10 0 0

Bread.

Bread.

assembly in that case made and provided ; and whereas I did forthwith go to the shop of the said A. O. in ---- aforesaid, and the said shop in the day time did enter, and there did find seven half crown loaves (or as many as there shall be) of wheaten bread exposed to sale, and did cause the same to be severally weighed, and found the same to be severally deficient in their due weight, one ounce each, according to the assize last settled, pursuant to the said act of assembly ; I do therefore hereby adjudge the said A. O. to be guilty of the said offence in manner aforesaid, and that he hath forfeited the said loaves for the use of the poor of the parish of ---- within which the said shop of the said A. O. is ; and I do hereby command you to take the said ---- loaves and distribute them among the said poor : and I do also adjudge, that by virtue of the said act of assembly the said A. O. hath, by reason of his said offence, incurred the forfeiture of Twenty Shillings proclamation-money to the use of the said A. I. or the sum of four pounds proclamation-money for the use of the poor (as the case shall be) : These are therefore to command you forthwith to distrain the goods and chattles of him the said A. O. and if the said sum of ---- shall not be paid in (five) days time from taking the said distress, together with lawful charges of taking and keeping the same, that then you do sell the said goods and chattels so distrained, and out of the money arising pay to the said A. I. or to the church-wardens of the said parish, for the use of the poor (as the case shall be) the aforesaid sum of ---- rendering the overplus (if any) upon demand unto the said A. O. after deducting the charges as aforesaid. And for so doing this shall be your sufficient warrant. Given, &c.

Bridges.

UNDER this title, the duty of those concerned in making and keeping in repair high roads, private paths, creeks, causeways, and cleansing of water passages, is inserted ; because the several acts of assembly made and passed in that behalf include the whole, and give the same powers and authorities to the commissioners, and impose the same duty on the inhabitants of this province in their respective districts ; and in case of default therein the like penalties are inflicted.

A. A. 1721.

Enacts, that the commissioners for building and keeping in repair the bridges, and for making and keeping in repair the high

high roads not exceeding forty feet wide, private paths, creeks, causeways, and cleansing of water-passages within their respective parishes or districts, have full power and authority to agree with workmen for building of bridges, and for making and keeping in repair high roads, &c. and to levy the necessary sum or sums of money for defraying the charges of the same, by an equal portion on all the males from the age of sixteen to sixty, or by the personal labour of the said males; and the commissioners are impowered to appoint one or more person or persons within their several districts to summon all such male persons as are liable as aforesaid to work on, or keep in repair such bridges, high roads, &c.

The power of commissioners for keeping in repair bridges &c.

Where any river or creek lies between two parishes, and either of the said parishes shall desire a bridge to be built over the said river or creek, for the conveniency of the inhabitants, the commissioners of both parishes are to meet and assess the inhabitants of both such parishes, rateably and proportionably, in the necessary sum or sums of money for building and keeping in repair such bridges.

How bridges on any river or creek lying between two parishes are to be built.

The person or persons directed, under the hands and seals of the majority of the commissioners to summon those liable to work on the bridges, high roads, &c. in case of refusal so to do shall forfeit the sum of Ten Pounds, to be levied by the constables of the parish or district where such persons so refusing shall live, by virtue of a warrant under the hands and seals of a majority of the commissioners; provided satisfactory reasons are not given to the commissioners by such persons for their neglect therein; one half of which forfeiture to be applied towards defraying the charges of the work, and the other half to be paid to the church-wardens of the parish for the use of the poor.

Penalty on such as refuse to execute the commissioners summons.

Overseers to attend, and direct those employed in building and repairing of bridges, making and keeping in repair, high roads, &c. are to be nominated and appointed by a majority of the commissioners; and such overseers have power moderately to correct all slaves that shall be negligent in such duty; provided they make use of no other instrument of correction than a switch or cow-skin, and give such moderate correction to such slave as shall be reasonable; and in case any white male person neglecting to work or do his duty, then the overseer shall return his name to the commissioners, who may, according to their judgment, fine such person, not exceeding Twenty shillings *per diem*,

Overseers to attend and direct those employed in building and repairing bridges, &c.

diem, for the first fault, and, if repeated, he not giving to the commissioners reasons to them sufficient for his so doing, he shall be liable to such other fines as they shall see meet. And the overseers so appointed, refusing to do their duty shall forfeit the sum of Ten pounds to be levied as aforesaid.

Low persons
doing damage
to the roads,
ought to
proceed
against.

If any person or persons shall by stopping of water, or otherwise, damage any bridge, high road, &c. every person so offending shall be summoned and required by the commissioners of that precinct where the fault is committed to repair the same; and in case of refusal or neglect thereof, the offender shall be fined at the discretion of the commissioners, in any sum not exceeding Ten pounds, for each time the commissioners shall give notice to the persons so offending to amend and repair the same, allowing three days between each notice; which fine is to be levied by warrant under the hands and seals of the commissioners, and applied for repairing the bridges in their district.

Trees convenient for shade
not to be cut
down, &c.

When any road shall be laid out, altered or amended in any part of the province, the commissioners of such precinct shall give directions for leaving such trees standing on or near the line of each such road or path, as shall be most convenient for shade to the said road or path. And in case any person, after such road or path is laid out, altered and cleared, shall cut down a tree growing within ten feet of the path, such person shall, for each tree so cut down, forfeit the sum of Twenty shillings to be disposed of as in the case of defaulters, and to be recovered in the same manner.

Any commissioner neglecting his duty
shall forfeit
10 l.

If any of the commissioners appointed for making and keeping of bridges, high-roads, &c. shall refuse to act, or neglect doing his duty, in and about making and repairing such bridges, high-roads, &c. in his precinct, he shall forfeit the sum of Ten pounds as often as he shall neglect to join the other commissioners; which sum or sums, so forfeited, shall be recovered by a warrant from under the hands of the majority of the commissioners of the parish or precinct, to be recovered and disposed of as they shall think fit.

Penalty on
any person
that shall oppose the commissioners in
making or
mending any
road, &c.

If any person or persons whatsoever, by themselves, slaves, or servants, shall, by any ways or means, stop up, or obstruct the passage on the roads aforesaid, or hinder, forbid, or threaten the commissioners, or any traveller from travelling the said roads, or shall hinder, forbid, or oppose the commissioners themselves, servants or workmen, from cutting down, felling:
or

or making use of any timber, wood, earth or stones, in or near the said roads, for mending, making, or repairing the same, shall for each and every such offence, forfeit the sum of Fifty pounds, to be recovered by the commissioners of that district where the offence is committed, by information, in any court of record, and the money so recovered to be by them disposed of for the reparation of such road.

All the commissioners for each parish or precinct shall meet at the parish church, or at the place where the majority of the commissioners shall think fit, at least twice in a year, viz. on Easter-Monday, and the first Monday in August, and shall determine all disputes that may arise in any respect, concerning any of the bridges already made, or which they shall think proper to be made; and they are to choose a commissioner in the room of any or more that shall die, go off the province, or refuse to act.

The commissioners to meet twice a year, and determine all matters relating to roads &c.

By act of assembly, 14. Geo. Anno 1741, all and every the white male person or persons liable by law to appear at any of the bridges, high-roads, private paths, Causeways, creeks, passages, or water-courses in this province, when the same are making, mending or repairing, who shall neglect or refuse to appear, or appearing shall presume to depart therefrom while such bridges, highways, &c. are making, mending, or repairing, every person so offending, shall forfeit for every day he shall offend herein, the sum of Twenty shillings current money: And in case any white person or persons whatsoever shall get drunk during the time he or they is or are attending the working upon the bridges, highways, &c. every such person shall forfeit the sum of Five pounds, current money, for every such offence, to be recovered and levied, if not exceeding Twenty pounds, by warrant of distress, under the hands and seals of a majority of the commissioners; and if above Twenty pounds, by action of debt, bill, plaint or information, in any court of record in this province, and shall be applied, one half to his Majesty for repairing the bridges, roads, &c. in the parishes respectively, where such penalties shall be incurred, and the other half to him or them who will inform and sue for the same.

All persons liable to work on any road, &c. fineable for non-appearance, and getting drunk &c.

All roads laid out, or to be laid out, made or to be made, at the instance, and by the application of particular persons, are declared to be private paths, and shall be made and kept in repair

Private paths how to be laid out and kept in repair.

Bridges.

pair by the proportionable labour and expence of such person and persons, who shall apply for, or use the same in common with that neighbourhood, and by no other person or persons whatsoever. Working upon such private paths shall not exempt or excuse the person or persons working thereon, from working on the high road, on which such person or persons were obliged to work before such private path was laid out, except where any person hath been, or shall be exempted by any act of the general assembly of this province. And the commissioners on application made to them, are required to lay out, and cause to be made and kept in repair in their respective districts all and every the private paths within the same, at the just and proportionable expence and labour of all and every the male inhabitants from sixteen to sixty years of age, residing therein, in such manner that no person or persons shall be obliged or compellable to labour on, or shall be at more charge in making or keeping in repair such private paths, than shall be consistent with the advantage received, or to be received therefrom by him or them.

The commissioners impowered to decide all disputes, and to determine which shall be deemed publick or private roads, &c.

The board of commissioners in each parish, at their appointed time of meeting are impowered to decide all such disputes as shall arise, and to determine, agreeable to the intention of this act, which roads are to be deemed private paths, and which high roads, and what persons are to work thereon, and on what part thereof they are to work, which determination shall be final and binding, and not to be altered by any future board of commissioners.

The commissioners to cause the roads, &c. to be repaired once a year, &c.

The several commissioners of all and every the bridges, high roads, &c. laid out and to be laid out, made and to be made, altered, amended and repaired in any part of this province, are obliged and required to cause the persons liable to work upon the said bridges, high roads, &c. to work upon the same respectively, at least once in every year (in case the same need any repair) under the penalty of one hundred pounds, current money, to be paid by each and every such commissioner and commissioners, who shall neglect or refuse so to do, to be recovered by action, bill, plaint or information in any court of record in this province.

Penalty on such as refuse to work.

If any person duly summoned by those appointed for that purpose, and shall refuse to go himself, and to send the male persons belonging to him, who are able to work on the bridges, high-

high-roads, &c. shall, for himself, and every such male person, forfeit the sum of Ten shillings *per diem*, to be levied as aforesaid.

Five of the commissioners of any parish or district, who shall meet at the parish church, or usual place of meeting on Easter-Monday, or the first Monday in August, are a board, and have full power to determine all such matters concerning bridges, high roads, &c. as shall come before them.

Five commissioners (in case no more are present) make a board to decide all matters relating to roads, &c.

Any commissioner, after having served three years, may resign his office, by signifying the same under his hand, to the board of commissioners for the parish or district for which he is appointed, at one of the terms of their annual meetings.

In case the commissioners of any parish, or a majority of them, for any reason whatsoever, shall neglect or refuse to do as they are by this act directed, then the Governour for the time being is empowered, on application made to him, from any three or more of the commissioners of such parish, to appoint one or more commissioners to act in the room of him or them that may be dead, gone out of the parish or district, or refuse to act, which commissioner or commissioners so appointed shall have the same powers and be subject to the same penalties as other commissioners.

In what case the governour is empowered to appoint commissioners.

Form of a warrant against a person refusing to execute the precept of the commissioners for summoning those liable to work on the bridges, high roads, &c. in their district.

COMPLAINT having this day been made to us A. B. &c. being a majority of the commissioners for building and keeping in repair the bridges of the parish or district (as the case shall be) of ----, that E. F. of the said ---- duly directed and authorised by us to summon all and sundry the persons liable to work on the bridges within our precinct, hath refused to summon the said persons, agreeable to our precept, duly made and delivered to him for that purpose, contrary to the act of assembly in that case made and provided: These are therefore in his Majesty's name to require you, to bring before us the said E. F. to answer the premisses: herein fail not.

Given under our hands and seals the ---- day of ----

Buggery.

Judgment on the above Warrant.

ON bearing the within complaint, it being duly proved before us, that the within named E. F. hath refused to execute the within mentioned precept; and he having given no satisfactory reasons to us for his so doing, We therefore do adjudge that the said E. F. do pay a fine of Ten Pounds immediately; and in failure thereof that the same be levied by execution on his goods and chattels.

Signed A. B. &c.

Form of an Execution on the above Judgment.

By A. B. &c. being a majority of the commissioners for building and repairing the bridges of the parish or (as the case is) district of ----

To the Constables of the said -----.

FORASMUCH as E. F. of the said ---- was this day adjudged by us to pay a fine of Ten Pounds for his neglect and refusal to execute our precept to him directed, for summoning the several persons within our district, agreeable to the tenor of the said precept, hath refused to pay the said fine of Ten Pounds. You are hereby required to levy the said sum of Ten Pounds by distress and sale of the goods of the said E. F. to the uses appointed by law, rendering to him the said E. F. the overplus (if any) and to make a return of your proceedings therein to us: herein fail not at your peril. Given under our hands and seals the ---- day of ----

Buggery.

1. **B**UGGERY is a detestable and abominable sin, among Christians not to be named, committed by carnal knowledge, against the ordinance of the creator, and order of nature, by mankind with mankind, or with brute beasts, or by womankind with brute beasts. 3. *Inst.* 58.

2. And by the statute of 25 H. 8. c. 6. buggery committed with mankind or beast is made felony without benefit of clergy.

3. Which said statute making it felony generally, there may be accessaries both before and after: but those that are present aiding

aiding and abetting are all principals, and although none of the principals are admitted to their clergy, yet accessaries before and after are not excluded from clergy. 1. H. H. 670.

4. If the party buggered be within the age of discretion (which is generally reckoned the age of fourteen) it is not felony in him, but in the agent only: but if buggery be committed upon a man of the age of discretion, it is felony in them both. 3 Inst. 59. 1 H. H. 670.

5. By the articles of the navy (22. G. 2. c. 33) If any person in the fleet shall commit the unnatural and detestable sin of buggery or sodomy, with man or beast, he shall be punished with death by the sentence of a court-martial.

6. This crime is excepted out of the act of general pardon. 20. G. 2. c. 52. § 17.

Warrant to apprehend a Buggerer.

Berkley } ff. To the Constables of the said County.
County. }

WHEREAS I. F. of ----- hath made oath before me I. P. one of his Majesty's justices of the peace of the county aforesaid, and thereby charged I. O. of ----- yeoman, with having on the ----- day of ----- had carnal knowledge of A. T. of the same place labourer, contrary to the statutes in that case made and provided; These are therefore to command you to apprehend the said I. O. and to bring him before me, or some other of his Majesty's justices of the peace for the said county, to be examined concerning the premisses with which he is charged: hereof fail not. Given, &c.

Committment of a Buggerer.

Berkley } ff. To the Constables of the said County.
County, }

WHEREAS I. O. of ----- yeoman, hath been charged upon oath before me, with having lately been guilty of the detestable crime of buggery, and upon his examination before me having said nothing material to clear himself of the said charge; These are therefore to command you to convey the said I. O. to the common goal of Charlestown, and to deliver him to the keeper thereof, hereby requiring you the said keeper to receive the body of the said I. O. into your goal, and there him safely keep, until he shall from thence be discharged by due cause of law: And hereof fail not at your peril. Given, &c.

Burglary.

BURGLARY is a felony at common law, in breaking and entering the mansion-house of another in the night, with intent to commit some felony within the same, whether the felonious intent be executed or not. *Hale's Pl. 79.*

To constitute the crime of burglary, there must be an actual breaking, such as opening the casement, or breaking the glass window, picking open the lock of a door, or putting back the lock, or leaf of a window, or unlatching the door that is only latched. 1. *H. H. 552.*

By the statute 12. *Ann. c. 7.* If any person shall enter into the mansion-house of another by day or by night, without breaking the same, with an intent to commit felony, or being in such house shall commit any felony, and shall in the night-time break the said house to get out, he shall be guilty of burglary, and ousted of the benefit of clergy, in the same manner as if he had broken and entered the house in the night-time, with an intent to commit felony.

It is deemed an entry when the thief breaketh the house, and his body or any part thereof, as his foot, or his arm, is within any part of the house, or when he putteth a gun into a window which he hath broken, or into a hole which he hath made of intent to murder or kill; this is an entry and breaking of the house: but if he doth barely break the house, without any such entry at all, this is no burglary. 3. *Inst. 64.*

If divers come in the night to do a burglary, and one of them break and enter, the rest of them standing to watch at a distance, this is burglary in all. 3. *Inst. 64.*

Mansion-house, includes churches, and the walls or gates of a walled town. 1. *H. 103.*

All out-buildings, as barns, stables, dairy-houses, adjoining to a house, are looked upon as part thereof, and consequently burglary may be committed in them: but if they be removed at any distance from the house, it seems it hath not been usual of late to proceed against offences therein as burglaries. 1. *H. 104.*

To break and enter a shop, not parcel of the mansion-house, in which the shop-keeper never lodges, but only works or trades there in the day-time, is not burglary, but only larceny: But if he or his servant usually, or often, lodge in the shop at night,

night, it is then a mansion-house, in which a burglary may be committed. 1. *H. H.* 557, 8.

As long as the day continues, whereby a man's countenance may be discerned, it is called day, and when darkness comes, and day-light is past, so as by the light of day you cannot discern the countenance of a man, then it is called night. 3. *Inst.* 63.

And this doth aggravate the offence, since the night is the time wherein man is at rest, and wherein beasts run about seeking their prey. Hence, in ancient records, the twilight was signified, when it was said *inter canem & lupum* (between the dog and the wolf) for when the night begins, the dogs sleeps, and the wolf seeketh his prey. 3. *Inst.* 63.

They are burglars who break any house, or church, in the night, although they take nothing away. And herein this offence differs from robbery, which requires that something be taken, though it is not material of what value.

By the 18. *Eliz. c. 7.* and 3. *W. c. 9.* benefit of clergy is taken away in cases of burglary, both from the principal and the accessory before; but in all cases of burglary accessories after must have their clergy. 2. *H. H.* 364.

All burglaries and robberies of churches are excepted out of the general pardon of the 20. *G. 2. c. 52.*

Warrant to apprehend a Burglar.

Berkley }
County. } ff. To the Constables of -----.

WHEREAS A. I. of ---- yeoman, hath this day made information and complaint upon oath, before I. P. Esq; one of his Majesty's justices of the peace for the said county, that yesterday in the night the dwelling-house of him the said A. I. at ---- aforesaid, in the county aforesaid, was feloniously and burglariously broken open, and one silver tankard (as the case shall be) of the value of Five Pounds current money, of the goods and chattels of him the said A. I. feloniously and burglariously stolen, taken, and carried away from thence; and that he hath just cause to suspect and doth suspect that A. O. late of -- labourer, the said felony and burglary did commit; These are therefore in his Majesty's name to command you, that immediately upon sight hereof you do apprehend the said A. O. and bring him before me to answer the premisses, and to be further dealt with according to law: herein fail not. Given, &c.

Burning.

Burning.

MALICIOUSLY and voluntarily burning the house of another by night or by day, is felony at the common law. 1 *Haw.* 105. But if done by mischance or negligence it is no felony. 3 *Inst.* 67.

2. If a man maliciously intending only to burn one person's house, happens thereby to burn the house of another, it will have the like construction, as if it had been levelled against him who suffers by it. 1 *Haw.* 106.

3. Not only a mansion-house, and the principal parts thereof, but also any other house, and the out-buildings, as barns, and stables adjoining thereto; and also barns full of corn, whether they be adjoining to any house or not, are so far secured by law, that the malicious burning of them is felony. 1 *Haw.* 105.

4. By the statutes of 23. *H.* 8. *c.* 1. and 25. *H.* 8. *c.* 3. No person who shall be found guilty for wilful burning of any dwelling-house, or barn, wherein any corn shall be, nor persons abetting, procuring, helping, maintaining or counselling the same, shall be admitted to the benefit of clergy. And from a clause of an act of assembly of this province 13 *Geo.* 2. it seemeth that no person shall be admitted to the benefit of clergy, who shall wilfully and maliciously burn, or destroy any stack of rice, corn or other grain of the product, growth or manufacture of this province; or shall wilfully and maliciously set fire to burn or destroy any tar-kiln, barrels of pitch, turpentine, or rosin, or any other the goods or commodities of the growth, produce, or manufacture of this province.

Justices of the peace, on request of the party injured, shall issue their warrant for apprehending all persons suspected for house-burning, and if any suspicious circumstance of guilt appear against such persons, upon their examination, they must be committed to goal, for such offenders are not bailable by justices of the peace.

By the commission of the peace, any justice may cause to come before him all those, who to any of the people, concerning the firing of their houses have used threats, to find sufficient security for the peace, or their good behaviour; and if they shall refuse to find such security, may commit them to goal.

Cattle

Cattle.

ALL planters or other inhabitants of this province, who do plant corn or other provisions, or any other thing which they would have secured from damage of horses, neat cattle, or any other stock, shall make, have, and keep a good, strong and sufficient fence, six feet high, about all sorts of provisions, and shall from time to time so maintain and keep the same.

A. A. Anno 1714.

Fences 6 feet high.

If any horses, neat beast or cattle, shall be found breaking into, or found in any persons plantations that hath sufficient fences, the owner or owners of such plantations, shall, by warrant from any justice of the peace. directed to the next constable where the injury is committed, summon three neighbouring freeholders, to make a true and just appraisement of any such damage or injury; which said appraisement the appraisers shall give under their hands, and on their oaths; and the justice of the peace is to give execution, if demanded, against the owner or owners of such horses, neat cattle or beast, to the value of the appraised damages: And for the second fault of the same horse, neat beast, or cattle in the same plantation, the justices to give execution double what the damages shall be appraised as aforesaid; provided, that in either of the said cases, the damage does not exceed Twenty pounds currency, and if above that sum to be recovered by a due course of law, as any other action of trespass.

If cattle break in where the fence is sufficient, how the person damaged shall have satisfaction.

If any person or persons shall brand, mark, disfigure, or kill any horses, neat cattle, or calves, not being the property of such person or persons, all and every such offender or offenders, upon being lawfully convicted of any or either of the said offences, shall, besides the penalties otherwise inflicted by law, be liable to a fine of Twenty pounds, proclamation-money, for any neat cattle or calf, so branded, marked, disfigured or killed, and shall be kept close confined in goal, until payment is made of the same. And in case the person so offending shall not have sufficient effects to discharge the said fine, he, she, or they shall receive such corporal punishment, not extending to life or member, as to his Majesty's justices (before whom such trial shall be had) shall seem meet.

A. A. 16 Geo 2. 1743.

How persons who mark, disfigure, or kill any neat cattle shall be punished.

Every person or persons who shall inform and give evidence against such person or persons who shall brand, mark, kill, or disfigure

Persons informing of offenders, how to be rewarded.

disfigure any horse, neat cattle or calves, shall, upon the conviction of such offenders, be entitled to the sum of Twenty pounds proclamation-money, for every person so convicted, to be paid by the Publick Treasurer, upon a certificate of the justices before whom such offenders were convicted. And if such informer or informers have been guilty of the like offences themselves, or accessory thereto, they are pardoned and absolutely acquitted of the same.

No slave to mark or brand any neat cattle, but in the presence of a white person.

No slave whatsoever shall mark or brand any horse, or neat cattle, but in the presence of some white person, under the penalty of being severely whipped, by order of any one or more of his Majesty's justices of the peace, before whom such offences shall be proved, by the evidence of any white person or slave.

How persons are to behave when any strayed horses, &c. shall come into their enclosed lands, &c.

Every person or persons within the province into whose enclosed grounds, hands or possession, to his or their knowledge any horses, neat cattle shall come, and the owner or owners of the same are unknown, shall within twenty days thereafter, inform one of the justices of the peace (who is *ex officio* a toll-master) thereof, together with the best description, he, she, or they can make of the same, under the penalty of four pounds proclamation-money for every such neglect. And the toll-master shall, under the penalty of Forty shillings like money, publish the same, with all convenient speed, in the Gazette, and at any place of divine worship in the parish where the toll-master resides, to be there continued three weeks. If the owner or owners of such strays shall appear and prove his or their property in the same, to the satisfaction of the toll-master, he shall immediately give an order for the delivery of such horses or neat cattle, to the owner or owners, upon being paid the charges of the advertisements, and Four shillings proclamation-money for his trouble, and also such charges and expences as shall by the toll-master be thought reasonable, to be paid to the person informing him of such horses or neat cattle, to be levied by warrant of distress in case of refusal. And if no owner appears within the term of twelve months, the toll-master must sell, or cause to be sold such horses or neat cattle at publick outcry to the best advantage; and to pay the monies thereby arising, to the Publick Treasurer, after deduction of lawful charges.

Overseers how to behave in like cases,

All managers and overseers of plantations shall give like information and description of strayed horses or neat cattle, to the toll-masters, as the owners of plantations are obliged to do; and in

in default thereof shall be liable to the same penalties for their neglect.

The wilful omission of any person or persons, for the space of forty days after the expiration of the twenty days within which he, she or they, are required to give information of strayed horses or neat cattle to the toll-master, is taken and declared to be an evidence of an intention to steal such neat cattle, in such person or persons, and will be admitted and taken as legal evidence of such intention, on the trial of any such person or persons, for feloniously stealing the same; and in this case a justice of the peace, upon receiving information upon oath of the wilful omission of such person or persons, ought to issue his warrant against such offenders, as in any other case of felony.

Persons wilfully neglecting to give information of strayed cattle to be tried as stealers of the same.

Form of a Summons for three Freeholders to appraise the Damages done by Horses or neat Cattle found in a fenced Plantation.

South-Carolina, }
County. } By I. P. one of his Majesty's Justices of the Peace of the County aforesaid.

To any lawful Constable for the said County.

COMPLAINT having this day been made to me by A. P. of the county aforesaid, planter, That --- horses or neat cattle (as the case shall be) the property of C. D. of the same county, gentleman, on the --- day of --- broke into and were found in the corn field of the said A. P. notwithstanding the same was sufficiently fenced according to law, to the damage of the said A. P. Twenty Pounds current money:

These are therefore to require you, to summon A. B. C. D. and E. F. three of the neighbouring freeholders to repair immediately to the said corn-field of him the said A. P. and there make a just and true appraisement of the damage complained of, and to return the same to me under their hands, and upon their oaths: hereof fail not, and this shall be your warrant for so doing. Given, &c.

The Return of the Appraisers.

WE A. B. C. D. and E. F. freeholders of --- county, by virtue of a warrant under the hand and seal of ----- one of his Majesty's justices of the peace of the said county, dated the -----

K

day

Cattle.

day of ----, went as directed by the said warrant, to the corn-field of A. P. in the said county, planter, and there having viewed such damage as was shewn to us by the said A. P. and which appeared lately to be done to the said corn-field, We have appraised and estimated the damage done to the said corn-field at the sum of ---- current money.

Given under our hands the ---- day of ----

A. B. C. D. E. F.

Form of an Execution against the Owner of Horses or neat Cattle who shall refuse to pay appraised Damages.

South-Carolina, } ff. By I. P. one of his Majesty's Justices of the
County. { Peace of the County aforesaid.

To any lawful Constable of the said County.

THESE are in his Majesty's name to charge and command you, that on the goods and chattles of C. D. of the county aforesaid, gentleman, you levy or cause to be levied the sum of ---- current money, being for damages sustained and recovered before me, by A. P. of the said county, planter, against the said C. D. as also the sum of ---- for his the said A. P. cost and charges expended in and about the recovery thereof, whereof the said C. D. is convicted, according to an act of assembly in that case made and provided.

Given under my hand and seal the ---- day of ---- in the ---- year of his Majesty's reign.

Penalties, &c.
how to be re-
covered.

All the penalties, forfeitures and damages, not exceeding Four pounds proclamation-money, of which any person or persons shall be lawfully convicted, for branding, marking, disfiguring, or killing of horses or neat cattle, or for not giving due information of strayed cattle, or for cattle breaking into, or found in any plantation sufficiently fenced, shall be recovered in such manner as is directed by the act for the trial of small and mean causes; but if above Four Pounds proclamation-money, to be recovered in a court of record, one half of which fines and forfeitures to be paid to the informer, and the other to the publick-treasurer.

Causes

Causes small and mean.

***ENACTS**, that upon complaint made by any person, or persons; to one or more of his Majesty's justices assigned to keep the peace within this province, of the non-payment of any debt, sum of money, or damages, to him or them due, or by him or them sustained, so that the debt or damages demanded do not exceed the sum of Twenty pounds current money of this province, whether the said debt or sum of money be due to the person or persons so complaining, by virtue of any bond or other specialty, promissary note, book-debt, or other contract; and whether the damages be sustained by reason of any trespass, wrong or injury, by the defendant, against the person or possessions of the complainant done and committed, or by reason of scandalous and defamatory words by the defendant of the complainant spoken, or by means of any cause, matter or thing whatsoever, in all such cases any one or more of the said justices is, and are empowered and required by warrant under his or their hands and seals, directed to any lawful constable, (in which warrant the day of the month, the name or names of the plaintiff or plaintiffs, and the nature and foundations of his or their demands, must be plainly expressed and specified) to summon the defendant to appear before him or them, or before the next justice of the peace, at such time and place as the justice or justices issuing such warrant shall appoint; and also to summon all witnesses required by either plaintiff or defendant for the better proving or disproving the cause of complaint, or for the better ascertaining the value of the damages sustained. And after both parties, with their witnesses, (if any are required) before him and them are come and appear, to examine, hear, try, judge and finally determine all the complaints and demands aforesaid. And in case witnesses are not, or cannot be produced to prove any debt, demand, matter, or thing, which may or shall be brought before any justice, or justices, then they are empowered to take the oath or oaths of the parties touching all the matters in dispute, which oath is first to be proposed or given to the defendant or defendants, and upon his or their refusal to take such oath, and answer such questions as shall be demanded by the justice or justices; then the plaintiff or plaintiffs shall be examined on his or their oaths, which being

A. A.
21. G. 2.
Anno 1745.

done, the justice or justices are to adjudge and determine all the matters in dispute between the parties according to justice and equity; and if such judgment and determination be not immediately complied with, an execution is to be issued for levying upon the goods and chattels of the person or persons against whom such judgment shall be, to the full value of the debt due, or damages sustained, together with the costs and charges.

Constables
how to be-
have on tak-
ing goods in
execution.

Constables shall cause all goods and chattels taken in execution to be kept in safe custody five days after they are so taken, and shall immediately advertise the sale thereof at some publick place in the neighbourhood, to the end that, if the defendant before the day appointed for the sale, shall pay the money ordered to be levied, the goods may be delivered to him; but, upon his further delay or refusal, the constable shall expose the goods to sale at publick auction, and shall apply the monies arising by such sale to the discharge of the judgment and execution, and the overplus (if any be) shall be returned to the defendant or defendants.

Debts how to
be proved.

The oath of the plaintiff, if the justice has reason to believe the same to be true, is sufficient to prove the plaintiffs debt or demand; but in case the defendant offers to deny the same upon oath, then the plaintiff must produce some white person to prove his debt or demand, unless the same be for a book-debt, in which case the oath of the plaintiff producing and swearing to his books, shall be allowed to be sufficient evidence to prove such debt or demand. And in case of non-appearance by the defendant, upon warrant duly served, and so returned by the constable, and affidavit thereof made, the justice is then impowered and required, upon due proof made of the debt, or damages, to pronounce judgment by default against the defendant, and thereupon to award and issue execution: but if the plaintiff become non-suited, or judgment shall pass against him, then the justice is impowered to assess to the defendant, reasonable costs against the plaintiff, to be levied by execution, if the same is not immediately paid. All constables to whom any original warrant, subpœna, or summons, for witnesses, or execution is directed, by any one or more of the justices of the peace, are obliged to pay due obedience in the execution thereof.

ALL

All suits for the recovery of any debts, dues, damages, or demands whatsoever to the value of Twenty pounds or under, or for, or by reason of any cause, matter or thing whatsoever, are issuable, triable, and determinable only before a justice or justices of the peace, and in no court of plea, or other judicature whatever. And all and every judgment by any justice or justices, so given and pronounced, whether upon full hearing or default, is final and conclusive to all parties without appeal. And if any person or persons commence or prosecute any action, in any of the courts of law in this province, and shall not recover above the sum of Twenty pounds current money, such person or persons shall lose all his, her, or their costs of suit.

All actions for debt, or damages to 20 l. determinable only by justices of the peace.

It is questioned by some, whether justices of the peace in this province are impowered and authorised to take cognizance of any complaint founded on the foregoing act, against another justice of the same quality.

It is clear that this act impowers justices of the peace to take cognizance of any cause, matter or thing not exceeding Twenty pounds current money, for which, before passing the said act, the party complaining, might have brought his action in the court of Common Pleas; and it is certain that justices of the peace were equally liable as any other person whatsoever to be prosecuted in the Court of Common Pleas before passing the said act, for any trespass or damage whatever; therefore it seemeth agreeable to the above mentioned act of assembly, that justices of the peace are liable to the jurisdiction of one or more justices of the same quality, upon complaint made of any cause, matter or thing against them, by virtue of the said act; otherwise there would be a failure of justice, for the act of assembly confines the trial of all causes, not exceeding Twenty pounds current money, to the jurisdiction of justices only.

But in regard the jurisdiction of trial of such causes is given, by the said act, to a justice or justices, it seemeth expedient for the justice to whom complaint may be made against another justice, for the non-payment of any sum of money, or damages, not exceeding Twenty pounds current money, to associate with another justice, and to issue their warrant for the trial of such complaint: this appears to be the safest way of proceeding, and warrantable by the act; for it is not to be supposed that the legislature intended that justices of the peace should not be

Causes small and mean.

be equally liable as others for trespasses and damages committed by them.

Besides, divers statutes of *England* gives a jurisdiction to two justices in many cases, where another justice may be the defendant. For instance,

All sums under Five pounds sterling due for postage of letters, are recoverable before two justices in the same manner as small tithes. 9. *Ann.*

Two justices may hear and determine forfeitures not exceeding Twenty pounds upon any of the statutes relating to the stamp duty, and issue warrants to levy the penalty by distress. 9. *Ann.*

Justices of the peace are commissioners for executing the acts for levying the window lights, and two justices may act therein. 8. *Ann.*

None of the above mentioned statutes exempt justices of the peace from the jurisdiction of the two justices who are judges for executing the several matters therein contained, nor does the act of assembly for the trial of small and mean causes, from which, and the reasons above mentioned, it appears that two justices may warrantably take cognizance of any complaint founded on the said act, against another justice of the same quality.

Form of a Summons for a Debt.

Form of summonses, subpoena and executions.

South-Carolina, } ss. By I. P. one of his Majesty's Justices of the
County. } Peace for the County aforesaid.

To any lawful Constable of the said County.

COMPLAINT being made unto me, by A. P. of the said county, yeoman, that E. D. of the same county, shoemaker, is indebted unto him the said A. P. in the sum of ---- current money of the province aforesaid; and that the said E. D. refuseth to pay the same. These are therefore to require you to summon the said E. D. to appear before me, or any other of his Majesty's justices of the peace for the county aforesaid, to answer the said complaint.

Given under my hand and seal the ---- day of ----.

Form

Causes small and mean.

71

Form of a Subpoena, or Summons for Witnesses to appear and give Evidence.

South-Carolina, } ff. By I. P. one of his Majesty's Justices of the
County, } Peace of the County aforesaid.

To any lawful Constable for the said County.

WHEREAS a cause is now depending, and to be tried at
---- on the ---- day of ---- between A. B. plaintiff, and
C. D. defendant. These are therefore to require you to summon ---
to be and appear at the time and place aforesaid, to give evidence
of what he, she, or they (as the case shall be) knoweth concerning
the matters in dispute between the said parties, that justice may
be done therein, according to an act of assembly in that case made
and provided. Given under my hand and seal the ---- day of ----.

Form of an Execution after Judgment is pronounced for the Plaintiff.

South-Carolina, } ff. By I. P. one of his Majesty's Justices of the
County, } Peace of the County aforesaid.

To any lawful Constable of the said County.

T H E S E are in his Majesty's name to charge and command
you, that on the goods and chattels of E. D. of the county
aforesaid, shoemaker, you levy or cause to be levied, the sum of ----
current money, which hath been by me adjudged to A. P. of the
said County, yeoman, for a debt; as also the sum of ---- for his
the said A. P.'s cost and charges expended in and about the recovery
thereof, whereof the said E. D. is convict, according to an act of
assembly in that case made and provided.

Given under my hand and seal the ---- day of ----, in the ----
year of his Majesty's reign.

Form of a Summons upon an Action of Damages.

South-Carolina, } ff. By I. P. one of his Majesty's Justices of the
County, } Peace of the County aforesaid.

To any lawful Constable for the said County.

C O M P L A I N T being this day made unto me, by A. I.
of the county aforesaid, spinster, that D. S. of the said county,
blacksmith, at ----, on the ---- day of ---- last past, did then and
there

Causes small and mean,

there falsely, maliciously and scandalously, speak, report, utter and publish the said A. I. to be a common whore, contrary to law, and to the damage of her the said A. I. Twenty pounds current money. These are therefore to require you to summon the said D. S. to appear before me, or any other of his Majesty's justices of the peace of the county aforesaid, to answer the said complaint. Given, &c.

Form of an Execution after Judgment given for the Plaintiff in the foregoing Summons.

South-Carolina, } ff. By I. P. one of his Majesty's Justices of the
County, } Peace of the County aforesaid.

To any lawful Constable of the said County.

T H E S E are in his Majesty's name charge and command you, that on the goods and chattels of D. S. of the county aforesaid, blacksmith, you levy, or cause to be levied, the sum of ---- current money, being for damages sustained and recovered before me, by A. I. of the said county, spinster, against the said D. S. as also the sum of ---- for her the said A. I.'s cost and charges expended in and about the recovery thereof, whereof the said D. S. is convict, according to an act of assembly in that case made and provided.

Given under my hand and seal the ---- day of ----, in the ---- year of his Majesty's reign.

Form of an Execution against the Plaintiff, when nonsuited, or Judgment shall pass against him.

South-Carolina, } ff. By I. P. one of his Majesty's Justices of the
County, } Peace of the County aforesaid.

To any lawful Constable of the said County.

T H E S E are in his Majesty's name to charge and command you, that on the goods and chattels of A. P. of the county aforesaid, planter, (or as his or her designation shall be) you levy or cause to be levied the sum of ---- current money, which hath been by me adjudged to C. D. of the said county, shoemaker, for his costs in defending an action for a debt or damages (as the case shall be) brought against him by the said A. P. and in which action he the said A. P. hath been nonsuited, according to an act of assembly in that case made and provided. Given, &c.

All

All suits for the recovery of any debts, dues, damages, trespasses, or demands whatsoever, not exceeding the sum of Twenty Pounds current money of this province, being issuable, triable, and determinable only before a justice or justices of the peace; and it often happening that wrongful distresses are made, by virtue of executions granted by justices of the peace, the persons injured by such wrongful distresses seem intitled to a writ of *Replevin* for the re-deliverance of the thing distrained, to remain with the first possessor on security or pledges given by him to try the right with the distrainer, and to answer him according to law. The most usual method to obtain a replevin is by complaint.

Form of a Complaint entered in Replevin.

A. B. of ---- planter, complains against C. D. of ---- constable, for having unjustly taken in his house, or freehold, in the parish of ----, one horse, &c. and offers E. F. security or pledge to try the right with the distrainer, and to answer him in a course of law.

A. B.

Form of a Replevin Bond to the Constable who makes the Distress.

South-Carolina.

KNOW all men by these presents, that we A. C. and E. F. of the parish of ---- in the said province planters (or as their designations shall be) are held and firmly bound unto C. D. a lawful constable of the said parish, and his successors or assigns, in the full and just sum of ---- current money of the said province, to be paid unto the said E. D. his successors or assigns, to the which payment well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors and administrators; and every of them firmly by these presents. Sealed with our seals, dated the --- day of ---- in the year of our Lord One thousand seven hundred and ----, and in the ---- year of his Majesty's reign.

The condition of the above obligation is such, that if the above bounden A. C. do and shall personally be, and appear before I. R. one of his Majesty's justices of the peace for ---- county, in the province aforesaid, on the --- day of ---, and shall then and there prose-

I.

cute

Causes small and mean.

cutte his suit with effect against C. D. constable of the said parish, for taking and unjustly detaining, as it is said, his horse, &c. and do make return thereof, if return shall be adjudged; and shall also save and keep harmless the said E. F. for and concerning the taking the said horse, &c. Then this obligation to be void, and of none effect, else to be and remain in full force and virtue. A. C.

Signed sealed and delivered

E. F.

in presence of

T. W.

G. W.

Form of a Writ of Replevin.

South-Carolina, } ss. By I. P. one of his Majesty's Justices of the
County, } Peace of the County aforesaid.

To C. F. a lawful Constable of the said County.

WHEREAS complaint hath been made unto me by A. C. of the parish of ---- of ---- county aforesaid, planter, that C. D. a lawful constable of the said parish and county, did, on the --- day of --- unjustly seize and take from the freehold of him the said A. C. one horse, &c. And whereas the said A. C. hath given security to try the right with the destrainer, and to answer him in a due course of law: These are therefore to command you, that justly and without delay, you cause to be replevied to A. C. his horse, &c. which C. D. took and unjustly detaineth, as it is said, that I may bear no more clamour thereupon for defect of justice.

Given under my hand and seal, &c.

Form of the Return to be made by the Constable, and indorsed on the foregoing writ, when executed.

I Do hereby certify unto I. P. Esq; that I have duly executed the within writ as therein directed, on the ---- day of ---

C. H. Constable.

Judgment in Replevin.

A. C. of ---- planter, and C. D. of ---- constable, having had legal notice to appear before me this ---- day of ----, in order to be heard upon the merits of a writ of replevin brought by the said A. C. against the said C. D. for the re-deliverance of a horse, &c. the property of him the said A. C. unjustly seized
and

and taken, as was alledged from the freehold of the said A. C. by the said C. D. The premisses being seen, and by me fully understood, it is considered, that the said C. D. did unjustly take and seize the said horse, &c. It is also considered, that the said A. C. do recover against the said C. D. the sum of ---- for his damages and expences sustained and expended in this suit.

I. P.

Cheat.

Of Cheats punishable by publick prosecution there are two kinds :

I. By common Law.

II. By Statute.

I. *By common Law.*

CHEATS which are punishable by the common law may in general be described to be deceitful practices, in defrauding or endeavouring to defraud another of his known right, by means of some artful device, contrary to the plain rules of common honesty, as by playing with false dice, or by causing an illiterate person to execute a deed to his prejudice, by reading it over to him, in words different from those in which it is written ; or by persuading a woman to execute writings to another, as her trustee, upon an intended marriage, which in truth contained no such thing, or by suppressing a will and such like.

But the deceitful receiving of money from one man to another's use, upon a false pretence of having a message and order to that purpose, is not punishable by a criminal prosecution, because it is accompanied with no manner of artful contrivance, but wholly depends on a bare naked lie, against which common prudence and caution are presumed to be a sufficient security. 1. *Haw.* 188.

II. *By Statute.*

BY the 33. *H.* 8. c. 1. if any person shall falsely and deceitfully obtain, or get into his hands and possession, any money, goods, chattels, jewels or other things, of any person, by colour or means of any false privy token, or counterfeit

Cheat.

letter made in another man's name, and charged upon oath therewith, such person is to be deemed a cheat: but a justice of the peace having no power to hear or try criminal causes, he must, upon receiving information upon oath of such offences, issue his warrant and commitment for such offenders, in order to their being brought to trial at the court of general sessions of the peace, assize, &c.

Form of a Warrant to apprehend a Cheat.

South-Carolina, } ff. By I. P. one of his Majesty's Justices of the
County, } Peace of the County aforesaid.

To any lawful Constable for the said County.

WHEREAS complaint hath been made unto me, upon the oaths of A. I. and B. I. of ---- yeomen, that on the ---- day of ---- A. O. of ---- yeoman, did, by a false privy token (or counterfeit letter) that is to say (here particularize the offence) falsely and deceitfully obtain and get into his hands and possession (here mention the things) from C. I. of ----, contrary to the statute in that case made.

These are therefore to command you, upon sight hereof, forthwith to apprehend and bring the said A. O. before me, to answer the said complaint, and to be further dealt with according to law.
Given, &c.

Mittimus for a Cheat.

South-Carolina, } ff. By I. P. one of his Majesty's Justices of the
County, } Peace of the County aforesaid.

To P. M. Esq; Provost-Marshal of the Province aforesaid, or to the Keeper of the common Goal of Charlestown, and to each of them:

WHEREAS A. O. late of ---- of the said county yeoman, hath been charged upon oath before me, with having falsely and deceitfully obtained and got into his hands and possession (here mention the things) from C. I. of ----, by means of a false privy token, contrary to the statute in that case made.

These are therefore in his Majesty's name to command you, and each of you, that you, or one of you, receive the said A. O. into your custody in the said goal, there to remain till he be from thence delivered according to law. Given, &c.

Church

Church-Wardens, &c.

- I. Chusing and swearing of Church-wardens, with their Duty thereupon.
- II. Their Duty as to Repairs, and therein of Vestries and select Vestries.

* **E**NACTS, That Church-wardens shall be chosen yearly on Easter-Monday, by the inhabitants of each parish in this province, that are of the religion of the Church of England, and that do conform to the same, and that are either freeholders within the same parish, or that do contribute to the publick taxes and charges thereof, or so many of them as shall think fit to attend at the parish-church, and where there is no parish-church, at such place as the church-commissioners, or a majority of them, shall appoint: " But if it so fall out, by reason of any unforeseen accident, or other cause, that the parishioners do not meet on Easter-Monday, then it is lawful for them to meet at any other time of the year to chuse Church-wardens; publick notice being given two several Sundays before such election, and those chosen the year before shall continue in their respective offices, and act in the same till such new election is made." And the Church-wardens so to be chosen must be inhabitants of the parish, and of the religion of the Church of England, and do conform to the same, and are either freeholders within the same parish, or that do contribute to publick taxes and charges thereof; Church-wardens so chosen shall take the following oaths and subscribe the test.

* A. A.
Anno 1706.

A. A.
Anno 1712.

Oaths required by Law to be taken by Church-wardens.

I A. B. do swear, that I do from my heart abhor and abjure, as impious and heretical, that damnable doctrine and position, that princes excommunicate or deprived by the pope, or any other authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare that no foreign prince, person, prelate, state or potentate hath or ought to have any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm." So help me God.

I A. B.

I A. B. do declare that it is not lawful upon any pretence whatsoever to take up arms against the king; and that I do abhor that traitorous position of taking up arms by his authority against his person, or against those that are commissioned by him.

The Declaration.

I A. B. do declare, that I do believe there is not any transubstantiation in the sacrament of the Lord's supper, or in the elements of bread and wine at or after the consecration thereof by any person whatever.

The Oath of Office which the Vestry are impowered to administer.

I A. B. do swear, that I will truly and faithfully execute the office of a Church-warden within this parish for the ensuing year, according to the laws and usage of this province, to the best of my skill and power, and until I shall be thereof duly discharged.

So help me God.

Vestries how
to be chosen.

Church-wardens being thus sworn, are duly qualified for the execution of that office. But if any person duly chosen, and wilfully refuse to serve in that office, and to take the foregoing oaths, he shall forfeit the sum of Ten pounds proclamation money, to be recovered in any court of record in this province. Besides the Church-wardens, and the Rector, Minister, or Incumbent for the time being, in each parish, the act of assembly, for the better and more easy dispatch of parish-business, appoints and requires that there shall be seven more Vestrymen in each parish, who shall be inhabitants of the respective parishes for which they are chosen, and shall conform to, and be of the religion of the Church of England, and shall be chosen by the inhabitants of each parish, in the same manner and form as directed for the election of Church-wardens; Vestrymen so elected and chosen shall take the same oaths, and subscribe the test, as the Church-wardens are required to do, and shall also take the following oath of office, viz.

I A. B. do solemnly swear and declare, that I will justly and truly execute the trust or office of a Vestryman of this parish, according

according to the best of my skill, knowledge or power, without prejudice, favour or affection.

So help me God.

Which said oaths are to be administered at the election of Vestrymen, by a justice of the peace of the county where such vestry is.

The Vestry of every parish is obliged to provide a fit person for a register, who shall at all times keep a fair and true register of the several proceedings of such vestry from time to time, in executing their trust and authority, and make just and true entries thereof; which person so to be appointed, shall take the oaths appointed for Church-wardens and Vestrymen to take, and subscribe the test, and also the following oath for the true and faithful execution of his office; which oath the vestry are empowered to administer, viz.

I A. B. do swear, that I shall well and truly serve the vestry of the parish of ---- in the office of register, whereunto I am admitted, and shall keep a fair and true register of the several proceedings of the said vestry, and make just and true entries thereof; and generally shall in all things behave myself as a true and faithful servant ought to do.

So help me God.

A Register thus sworn shall be admitted into his office, and shall make true entries of all vestry proceedings, and of all births, christenings, marriages, and burials (that is to say) the christian and surname, with the day and month and year of every such births, christenings, marriages and burials, of which the inhabitants of the respective parishes, whether parents, guardians, overseers, masters, mistresses, or executors or administrators of any person born, christened, married or buried, are required and enjoined to give notice to the Register of such parish, within two months after such events happening.

The Clerk and Sexton are chosen by the Vestry, and continue in their offices during life, or their residence in the province, unless the Vestry shall think fit to remove them, which they have a power to do, and to appoint others in the room of him or them so removed.

The first Tuesday in January, April, July and October, is fixed for holding Vestries in the several parishes, at Eleven of the clock

The vestry to provide a fit person for their register.

The clerk and sexton to be chosen by the vestry.

Vestries to be holden on the first Tuesday

in January,
April, July, &
October, &c.

Penalty upon
a vestry-man
being absent.

Vestrymen
removing or
unfit to be dis-
placed by the
rest of the
vestry.

A. A.
Anno 1712.
In case of the
death or dis-
charge of a
church-war-
den, the ves-
try to chuse
another.

Repairs for
the parsonage
to be paid out
of the publick
treasury.

clock in the forenoon, in the usual places for that purpose, without any notice to be given thereof; at which time and place, the major part of the Vestrymen then present, (so as such majority be not under the number of five persons) have full power to order, direct and act in all things relating to their office. And the said several Vestries are not only obliged to meet on the said several days, but also as often as need shall require, upon publick notice given, either by the Rector or Minister, or by three of the Vestrymen of each parish; and from which Vestry, so appointed, no Vestryman being personally summoned, shall absent himself without a lawful excuse, under the penalty of such fine, as the residue of the said Vestry shall lay upon him, so as the same never exceed ten shillings, proclamation-money.

In case any Vestryman shall remove or withdraw, or voluntarily frequently neglect to give his attendance, or become unfit or incapable to execute such office or trust, in any such case the residue of the vestry, or the majority of them (so as such majority be not under five persons) have power and may (after personal notice given to such party, if it conveniently may be, or the affixing of a publick notice upon the great door of the church for three several Sundays successively, if such personal notice cannot be given without great difficulty, of their intentions to proceed in such manner) remove such person from being a vestryman, and declare his office void; and then to summon the parishioners qualified, to meet and elect another in the room of such person, and shall, (after allowing a reasonable time to such person to make his complaint, if he apprehends himself injured, not exceeding a fortnight) proceed to a new election.

Enacts, That in case of the death, removal out of the parish, or legal discharge of any of the Church-wardens, the Vestry of such parish have power to appoint a fit person, duly qualified, to be a Church-warden, and to officiate as such during the remaining part of the time, that the person so dead or discharged should have officiated.

Upon the election of any new Rector or Minister, the Church-wardens, at any time within two months after such election, upon the request of such Rector or Minister, with the assistance of such workmen or skilful persons as they shall think fitting to take with them, to view the dwelling-house, and other the buildings standing on the glebe land belonging to such Rector or Minister, and see what is wanting and necessary to be done for

for the repairs of the same, shall make as near an estimate as they can of the charges thereof, and shall lay the same before the vestry, and being approved of by them, then the church-wardens shall cause the repairs to be made accordingly; and the charges thereof being given into the vestry and approved of, an order is to be drawn by the vestry upon the publick-treasurer for the payment of the same; provided the sum for such repairs does not exceed Twenty-five Pounds proclamation-money. And the church-wardens and vestry of each parish that draw for such repairs, shall render an account of the money how laid out, to the church-commissioners, at their next meeting after such repairs are made; and if, upon examining the said account, it appears that the repairs are not made, or that the sum drawn for is not applied to that use, then such church-wardens shall be obliged to refund the same into the treasury.

A. A. 7. G. 1.
Anno 1722.

The vestries of the several parishes may draw as often as they think fit in the year, upon the publick treasurer, for their parish charges; provided the several sums in the whole year, to be computed from Easter to Easter, exceed not in the whole, for the parish of St. Philip, Charlestown, the sum of Fifty-five pounds proclamation-money, and for the other parishes the sum of Forty pounds like money each; and if any part of the Forty pounds remain unexpended, it is to be drawn for, and applied to the relief of the poor.

The vestry to draw upon the publick treasurer for parochial charges.

For the other duties of church-wardens, see title **Door**.

Committment.

- I. Who may be committed.
- II. To what Place.
- III. The Form of the Committment.
- IV. That the Goaler shall receive the Prisoner.

I. *Who may be committed.*

THERE is no doubt, but that persons apprehended for offences, which are notailable, and also all persons who neglect to offer bail for offences, which areailable, must be committed.

Wheresoever a justice is impowered to bind a person over, or to cause him to do a certain thing, and such person being in

M

his

Committment.

his presence shall refuse to be bound or do such thing, the justice may commit him to goal, there to remain till he shall comply. 2. *H.* 116.

II. To what Place.

1. **A**LL felons and offenders whatsoever, who are triable and punishable by the court of general sessions of the peace, shall be committed to the common goal of Charlestown.

2. But rogues, vagabonds, lewd and idle persons and beggars, stubborn and obstinate apprentices and servants (on complaint of their masters or mistresses) and children (on complaint of their parents) common drunkards, common night-walkers, pilferers, lewd, wanton and lascivious persons, common scolds and brawlers, tradesmen and labourers neglecting their callings, and leading idle and dissolute lives, and who do not provide for the support of their families, upon conviction of any of the said offences, or disorders, before any two justices of the peace living and residing in Charlestown, one of whom to be of the *Quorum*, every such offender or offenders shall be by the said justices committed to the work-house in Charlestown, for no longer time than three months, nor less than three days, there to be kept according to the rules and orders of the said house.

III. The Form of the Committment.

1. **I**T must be in writing, made by the justice, expressing his office or authority, and must be directed to the constable employed to carry the offender to prison; and it must likewise be directed to the provost-marshal, or keeper of the prison.

2. It must contain the name and surname of the party committed, if known; if not known, then it may be sufficient to describe the person by his age, stature, complexion, colour of his hair, and the like, and to add, that he refuseth to tell his name. 1. *H.* 577.

3. If the party is charged upon oath, it is safe and proper it should be so mentioned in the committment.

4. It ought to contain the cause, as for treason, felony, or suspicion thereof, otherwise if the prisoner escape it is no offence at all; whereas if the mittimus contained the cause, the escape were treason, or felony, though he were not guilty of the offence; and therefore, for the king's benefit, and that the prisoner

prisoner may be the more safely kept, the mittimus ought to contain the cause. 2. *Inst.* 52.

And hereupon it appeareth, that a warrant or mittimus to answer to such things as shall be objected against him, is utterly against law. 2. *Inst.* 591.

Also it ought to contain the certainty of the cause, and therefore if it be for felony, it ought not to be generally for felony, but it must contain the special matter of the felony briefly, as for felony for the death of such a one, or for burglary in breaking the house of such a one; and the reason is, because it may appear to the chief justice or assistant judges, upon an *Habeas Corpus*, whether it be felony or not. 2. *H. H.* 122.

5. It must have an apt conclusion, as if it is for felony, to detain him till he be delivered by due course of law. 2. *Haw.* 120.

6. It must be under seal; and without this the commitment is unlawful, the goaler is liable to a false imprisonment, and the wilful escape by the goaler, or break of prison, makes no felony. 1. *H. H.* 583. But this must not be intended of a commitment by the sessions, or other court of record, for there the record itself, or the memorial thereof, which may at any time be entered of record, are a sufficient warrant, without any warrant under seal. 1. *H. H.* 584.

7. It should also set forth the place at which it is made. 2. *Haw.* 119.

8. It must also have a certain date of the year and day. 2. *H. H.* 123.

IV. *That the Goaler shall receive the Prisoner.*

IF the goaler shall refuse to receive the person committed, or take any thing for receiving him, he shall be punished for the same by the justices of goal delivery.

Warrant of a Commitment.

South-Carolina, }
County. } By I. P. one of his Majesty's Justices assigned
to keep the Peace in the County aforesaid.

To ----- Constable of ----- Parish in the said County, and to the Provost-marshal, or keeper of the common goal of Charlestown.

WHEREAS A. O. late of ----- in the said county labourer,
hath been arrested for suspicion of a felony by him, as it is
said, committed in stealing a bay horse, of the value of Forty
M 2 Pounds

Constable.

Pounds current money of the said province, the property of A.P. of --- in the said county, yeoman: These are therefore to command you the said constable, in his Majesty's name, forthwith to convey and deliver into the custody of the provost-marshal, or keeper of the common goal aforesaid, the body of the said A. O.; and you the said provost-marshal, or keeper of the common goal aforesaid, and each of you, are hereby required and commanded, that you, or one of you, receive the said A. O. into your custody in the said goal, there to remain till he be delivered by due course of law.

Given under my hand and seal the ---- day of ---- in the ---- year of his Majesty's reign.

Constable.

The office of a constable in executing of warrants, is treated of under the titles **Arrest** and **Warrant**; and in like manner the other particulars of his duty may be found under the respective titles throughout the book; this title treating only of the office of a constable in general.

- I. Who shall be a Constable.
- II. How appointed and sworn.
- III. His Duty as a subordinate Officer to Justices of the Peace.
- IV. His Indemnity and Protection in his Office.
- V. His Fees.

I. Who shall be a Constable.

EVERY male person, from the age of sixteen to sixty, (apothecaries, practising physicians, sworn attornies, or other officers of the courts of justice, practising barristers at law, every preacher or teacher in holy orders, in a congregation tolerated by law, and all judicial officers during the time of their being such, excepted) are liable to serve in the office of a constable, or to pay a fine of Twenty-five pounds current money.

II. How appointed and sworn.

Constables to be appointed by whom.

ALL constables in this province shall be appointed in such number and for such places as the chief justice for the time being, and the judges of the court of general sessions of the

the peace, oyer and terminer, assize and general goal-delivery, shall from time to time in their discretion think fit.

Form of the Appointment of a Constable.

South-Carolina.

IT is ordered that C. B. do serve in the office of constable for ----- parish in the room of C. D. and that the said C. B. be sworn into his said office of a constable, before any of his Majesty's justices of the peace of the province aforesaid, and that the said C. D. do make, or cause to be made, a return of this order, to the office of clerk of the crown and peace, within two months from the date hereof. Dated at Charlestown the ----- day of -----.

Order for appointing a constable.

By order of the court.

Clericus.

The oath of a Constable.

YOU shall well and truly serve our sovereign lord King George the Second, in the office of a constable, in and for the parish of ----- for the year ensuing, or until you shall be thereof discharged according to due course of law; you shall well and truly do and execute all things belonging to the said office, according to the best of your knowledge.

Oath of a constable.

So help you God.

III. His Duty as a subordinate Officer to Justices of the Peace.

IT hath always been holden, that the constable is the proper officer to a justice of the peace, and bound to execute his warrants; and therefore it hath been resolved, that where a statute authorises a justice of the peace to convict a man of a crime, or pass judgment for a debt, and to levy the same by distress, without saying to whom such warrant shall be directed, or by whom it shall be executed, the constable is the proper officer to serve such warrant, and indictable for disobeying it.

Subordinate to justices of the peace.

Constables are also obliged to attend the court of general sessions of the peace, assize, &c. once in the year, to make their presentments (that is to say) such constables as are, or shall be appointed at a court held, or to be holden in March, shall attend the court of sessions to be held in that month of the succeeding year: And that such constables as are, or shall be appointed at any

Constable.

any court held, or to be holden in the month of October, shall attend at the court of general sessions, which shall be held in the month of October in the year following, otherwise they shall be liable to such fines as the court shall please to set upon them.

IV. His Indemnity and Protection in his Office.

No action if
he delivers a
copy of the
warrant.

NO action shall be brought against any constable, or other person acting by his order, and in his aid, for any thing done in obedience to the warrant of a justice of the peace, until demand hath been made, or left at the usual place of his abode, by the party or by his attorney, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for six days after such demand; and if after compliance therewith, any action shall be brought without making the justice who signed such warrant defendant, on producing and proving such warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the justice: And if such action be brought jointly against the justice and constable, on proof of such warrant, the jury shall find for the constable, notwithstanding such defect of jurisdiction as aforesaid.

Constable af-
faulted need
not go back
to the wall.

If a constable is assaulted in the execution of his office, he need not go back to the wall, as a private person ought to do; and if in the striving together the constable kills the assailant, it is no felony; but if the constable is killed, it shall be construed premeditated murder. *Hale's Pl. 37.*

V. Constables Fees in current Money.

Constables
fees.

	L.	s.	d.
F OR serving a summons	-	-	0 7 6
For serving an execution	-	-	0 7 6
For poundage, after the rate of 5 per cent. on all sums levied.			
For mileage out and home per mile	-	-	0 1 3
For serving a peace warrant	-	-	0 12 6
For carrying on a hue and cry	-	-	1 17 6
For attendance in searching for stolen goods, for every day at the request of the party complaining			1 0 0
For each day in assisting to distrain for his Majesty's quit-rents			0 12 6

For

Coroner.

87

	L.	s.	d.
For causing an execution upon every slave, extending to life - - - - -	5	0	0
And also such other charges as are allowed to the warden of the work-house for keeping and maintaining any slave.			
For causing any slave to be corrected, by whipping or other corporal punishments - - - - -	1	0	0

Coroner.

Coroners are ancient officers by the common law, so called because they deal principally with the pleas of the crown : concerning whom I shall shew,

- I. His Power and Duty in taking an Inquisition of Death.
- II. His Power and Duty in other Matters.
- III. His Fees and Forfeiture for Neglect.

I. His Power and Duty in taking an Inquisition of Death.

* **E**NACTS, That every coroner within the county, for which he is appointed, is impowered to take inquests of felonies; and other violent and casual deaths committed, or happening within his precinct; but, before he undertake the execution of his office, must take the following oath : * A. A. Anno 1706.

YOU swear that well and truly you shall serve our sovereign lord the King, in the office of a coroner, and as one of the coroners for ---- county, and therein you shall truly and diligently do, and accomplish all and every thing and things appertaining to your office, after the best of your cunning, wit, and power, for the profit and good of the inhabitants within the said county, taking such fees as you ought to take by law, and not otherwise.

So help you God.

So soon as any coroner shall be certified of the dead body of any person supposed to have come to a violent and untimely death, found or lying within the county or precinct, he shall make out his warrant directed to all or any of the constables of the same county, where such dead body lies, requiring them
A jury of 14 men to be summoned.
forth-

forthwith to summon a jury of fourteen good and lawful men of the said county, to appear before him at the time and place in the said warrant expressed, which warrant is to be made in the following form :

South-Carolina.

To any of the Constables of ----- County. Greeting,
THESE are in his Majesty's name to require you immediately upon the receipt and sight hereof, to summon and warn fourteen good and lawful men of the said county to be, and appear before me the coroner of the said ----- county, at ----- within the said county, betwixt the hours of ----- and ----- of the clock in the ----- day of -----, then and there to enquire upon the view of a body, of a certain person there lying dead, how and in what manner he came to his death. Fail not herein as you will answer the contrary at your peril.

Given under my hand and seal at ----- the ----- day of -----, in the year of our Lord -----, and in the ----- year of his Majesty's reign.

By me ----- coroner for ----- county.

Constables
making de-
fault forfeit
40 s.

Jurors mak-
ing default
forfeit 40 s.

Every constable failing of performing his duty by such warrant required of him, shall forfeit the sum of Forty shillings, also every juror summoned, and does not appear shall forfeit the like sum of Forty shillings, without a reasonable excuse made and approved of by the coroner, and next justice of the peace: the coroner shall swear twelve or more of the jurors that appear, and give the foreman (to be by him appointed) the following oath upon view of the body, viz.

The form of
the oath.

YOU shall enquire, and true presentment make on behalf of our Sovereign Lord the King, how, and in what manner, A. D. here lying dead, came to his death; and you shall deliver up to me, his Majesty's Coroner, a true verdict thereof, according to such evidence as shall be given you, and according to your knowledge.
 So help you God.

And then shall swear the rest of the jurors by three or four at one, in this form, viz.

ALL such oath as I. M. the foreman of this inquest hath taken, you, and every of you, shall well and truly observe, and keep on your parts.
 So help you God.

The

The jury being sworn, the coroner shall give them a charge, upon their oath to declare of the death of the person, whether he died of felony, or by mischance and accident ; and if of felony, whether of his own or another, and if by mischance and misfortune, whether by the act of God or of man ; and if he died of another's felony, who are principals, and who accessaries, who threatned him of his life or members, with what instrument he was struck or wounded, and so of all prevailing circumstances that can come by presumption ; and if by mischance or accident, by the act of God or man, whether by hurt, fall, stroke, drowning or otherwise, to enquire of the persons that were present, the finders of the body, his relations or neighbours, whether he was killed in the same place, or elsewhere, and if elsewhere, by whom, and how he was then brought, and of all other circumstances ; and if he died of his own felony, then to enquire of the manner, means and instrument, and circumstances concurring.

The coroner's charge to the jury.

The jury being charged, proclamation shall be made, for any that can give evidence, to draw near and they shall be heard.

Proclamation to give evidence.

Every witness summoned to appear to give evidence, and not appearing, forfeits the sum of Forty shillings, without a reasonable excuse, allowed by the coroner and next justice ; and if the evidence be not ready, the coroner may adjourn to another day and place, binding the jury by a recognizance in Five pounds each, for their appearance ; and to such witnesses as appear, the coroner is to administer the following oath, viz.

Witnesses summoned and not appearing forfeit 40 s.

The coroner may adjourn to another day.

All such evidence as you shall give to this inquest, concerning the death of A. D. here lying dead, shall be the truth, the whole truth, and nothing but the truth.

The examination of such witnesses to be taken in writing under their hands ; and if they relate to any person concerned in the death of the person found dead, then shall the coroner bind over such witnesses by recognizance in a reasonable sum, not less than Twenty pounds proclamation-money each, to appear at the next Court of general sessions of the peace, assize, &c. The jury having finished their inquest, must deliver their verdict in writing, indented under their hands and seals, which shall pass interchangeably between the coroner and them : The form of which is as follows :

The verdict of the jury to be in writing, &c.

Coroner.

South-Carolina, }
County, }

AN inquisition indented, taken at ---- in the county of ---- aforesaid, the --- day of ---, in the ---- year of the reign of ----, before me, A. C. gentleman, Coroner for our said Lord the King, for the county aforesaid, upon the view of the body of A. D. then and there lying dead, upon the oaths of A. B. C. D. E. F. &c. good and lawful men of the said county, who being charged and sworn to enquire for our said Lord the King, when, where, how, and after what manner the said A. D. came to his death, do say upon their oaths, &c. (Here insert how, where, at what time, by what means, with what instrument, and in what manner the party was killed, or came to his death.)

If murdered
by a person
known.

And if it shall appear that the deceased was killed or murdered by a person known, the inquisition must be concluded after this manner: *And so the jurors aforesaid, upon their oaths aforesaid, say, that the aforesaid R. M. in manner and form aforesaid, the aforesaid A. D. then and there feloniously did kill and murder, against the peace of our Sovereign Lord the King, his crown and dignity.*

If self-mur-
der.

If it appear to be Self-Murder, the inquisition must conclude after this manner: *And so the jurors aforesaid say, upon their oath, that the said A. D. in manner and form aforesaid, then and there voluntarily and feloniously, as a felon of himself, did kill and murder himself, against the peace of our Sovereign Lord the King, his crown and dignity.*

If by mis-
fortune.

If it appear the person was slain by misfortune, then say, *And so the jurors aforesaid say, upon their oath, that the aforesaid A. D. in manner and form aforesaid, was killed, or came to his death by misfortune.*

If by the
hands of an-
other person.

If by the hands or means of another person, thus: *The aforesaid R. F. the aforesaid A. B. by misfortune, and contrary to his will, in manner and form aforesaid, did kill and slay.*

Where one hangs himself, thus: *Not having God before his eyes, but being seduced and moved by the instigation of the devil, at ---- aforesaid, in a certain wood at ---- standing and being, the said A. D. being then and there alone, with a certain hemp, and the value of ----, which he then and there had and held in his hands, and one end thereof he then and there put about his neck, and the other end thereof he tied about a bough of a certain oak tree, and himself then and there, with the cord aforesaid, voluntarily and feloniously, and of his malice, forethought, hanged and suffocated; and so the jurors aforesaid, upon their oaths aforesaid, say,*

say, that the said A. D. then and there, in manner and form aforesaid, as a felon of himself, feloniously, voluntarily, and of his malice, forethought, himself killed, strangled and murdered, against the peace, &c.

Upon one who dies in goal: *Who say upon their oath, that the aforesaid A. D. on the day of the taking of this inquisition, being a prisoner in the goal of ----, in the county aforesaid, then and there died of the visitation of God, and then and there, in manner and form aforesaid, came to his death, and not otherwise. In witness whereof, as well I the coroner aforesaid, as the jurors aforesaid, to this inquisition have interchangeably put our hands and seals, the day and year first above written.*

Who die in goal.

The coroner, after taking such inquisitions, shall make return of the same to the clerk of the general sessions of the peace, &c. And upon verdict found of the death of a person, by felony of another, shall inform a justice, that the person accused may be apprehended.

Return of the inquisition.

Whatever person shall bury; or cause to be buried, any person supposed to come to a violent and untimely death, before notice is given to the coroner to view the body, such person so offending shall forfeit the sum of Five Pounds; and the coroner may order such body so buried to be taken up, in order to his making an enquiry into the manner and causes of the death of the person so buried; but in case the body hath been so long dead that the death of the person cannot be known from the view of the body, then the coroner shall make a record of the same, together with the names of the persons who buried or caused the dead body to be buried, and return the same to the clerk of the general sessions, in order to their being fined, over and above the Five Pounds.

How to act when a person supposed to have suffered a violent death is buried, without notice given.

If any person bit with a rattle-snake die suddenly and immediately of such bite, such death is deemed a violent and untimely death, and the coroner shall take view of such body the same as other violent or casual deaths.

A person dying by the bite of a rattle-snake.

II. His Power and Duty in other Matters, and Forfeiture for Neglect.

THE coroner of the county for which he is appointed, is to serve and execute all writs and processes to him directed against the provost-marshal, living in the same county; and also in all causes wherein the marshal is plaintiff: and the coroner

Writes against the marshal, and where he is plaintiff, to be served by the coroner.

roner in such cases shall have the like fees as is allowed to the marshal.

A. A. 4. G.
2. Anno Do-
mini 1731.
Key to be
kept by the
coroner to the
jury box; and
his forfeiture
for not at-
tending the
drawing any
jury.

The coroner of Berkley-County is obliged to have a lock and key to the box or chest containing the names of the jurors of the courts of general sessions of the peace, assize, &c. and of the court of common-pleas; and in case of his refusal, or neglect to give due attendance, to draw and impanel any jury appointed to be drawn and impanelled, when he shall receive due notice for that purpose, he shall forfeit the sum of Ten Pounds proclamation-money.

III. *His Fees in current Money.*

Coroner's
fees.

				L.	s.	d.
I F within ten miles of his residence	-	-	-	10	0	0
If within fifteen miles	-	-	-	12	10	0
If within twenty miles	-	-	-	15	0	0
If within thirty miles	-	-	-	17	10	0
If more than thirty miles	-	-	-	20	0	0

Dams.

A. A. 17. G. 2.
Anno 1744.

No person to
make any
dams, or let
off reserved
water so as to
injure an-
other.

How offen-
ders are to be
proceeded
against.

E NACTS, that no person or persons whoever, shall be permitted or allowed to make or keep up any dams or banks to stop the course of any waters, so as to overflow the lands of any other person, without the consent of such person first had and obtained; nor shall any person or persons whoever, be permitted or allowed to let off any reserved water to injure the crops upon the grounds of other persons.

2. In case any person or persons shall make or keep up any dams or banks, to the injury of any other person as aforesaid, upon complaint thereof made, by the party injured, to any justice of the peace for the county where the offence shall be committed, he is fully empowered and required to summon three freeholders of the parish or neighbourhood, one of whom shall be named by the justice, and one by each of the other parties, and in case of their or either of their refusal by the said justice immediately to view the same; (and such freeholders, being first sworn before such justice, to determine the matter justly and impartially) shall forthwith proceed to such dams and banks, and the damages complained of, and certify the matter as they shall find it,

it, under their hands, to the said justice. And in case an award shall be given in favour of the complainant, the justice shall immediately make an order to cut open such bank or drain, in such manner as to prevent any further damage; the expence whereof, and also all other charges attending the prosecution, to be paid by the defendant.

3. In case any damages have been sustained by the complainant, either by such dams or banks being kept up, or by letting off any reserved waters, the freeholders shall, upon view thereof, ascertain and certify the same under their hands to the justice; provided the same do not exceed Four pounds proclamation-money; which damages, so ascertained, the offender shall immediately pay, and satisfy to the party grieved; and in case of neglect or refusal so to do, at the end of ten days, the same shall be recovered in the manner directed for the trial of small and mean causes. But in case the freeholders shall be of opinion that such damages exceed Four pounds proclamation-money, the same may be sued for in any Court of Record in this province. Provided always, that nothing in this act contained shall extend, or be construed to extend, to subject any persons who have, or shall make any dams to reserve water, to pay any damages which may be sustained by breaking of such banks or dams, when it is occasioned by such violent rains and floods as would have caused such damages to be sustained on the lands in question, though no such bank or dam had been made, whereof the freeholders shall be the judges.

Damages
how to be re-
covered.

4. In case any justice refuse or neglect to put this act in execution, he shall forfeit the sum of Ten pounds, proclamation-money, which penalty shall and may be sued for in any Court of Record in this province, one moiety to his Majesty, and the other to him or them that will sue for the same. And in case any freeholder shall neglect or refuse to obey the summons of the justice, or any other matter of them required, such freeholder shall (unless he can make a reasonable excuse) forfeit the sum of Four pounds proclamation-money, to be sued for and recovered as directed by the act for the trial of small and mean causes, and to be applied the one half to the informer, and the other to his Majesty.

Penalties on
those who
neglect or re-
fuse to put
this act in ex-
ecution.

5. The freeholders shall be allowed for their trouble, the sum of Six shillings, proclamation each, for each days attendance, to be paid by the party in the wrong.

The freehol-
ders allowed
6 s. per diem.

6. In

Distress.

6. In case any person or persons shall be sued for any act, matter or thing, done in pursuance of the directions of this act, it shall be lawful for them to plead the general issue, and to give this act, and the special matter in evidence.

Distress.

- I. For what Causes a Distress shall be.
- II. What Goods may be distrained, and what not.
- III. At what Time the Distress shall be taken.
- IV. That reasonable Distress shall be taken.
- V. Manner of making Distress.
- VI. Sale of the Distress.
- VII. Rent in case of an Execution.

I. For what Causes a Distress shall be.

Rent in ar-
rear.

1. **D**ISTRESS for rent must be, for rent in arrear, therefore it may not be made on the same day on which the rent becomes due; for if the rent is paid in any part of that day, whilst a man can see to count money, the payment is good.

Tender of
payment.

2. It must not be after tender of payment; for if the landlord come to distrain the goods of his tenant for rent behind, before the distress, the tenant may upon the land tender the arrearages, and after that a distress be taken, it is wrongful: and if the landlord have distrained, if the tenant, before the impounding thereof tender the arrearages, the landlord ought to deliver the distress, if he doth not, the detainer is unlawful. Even so it is in case of damage feasant (or damage done by cattle trespassing) the tender of amends before the distress maketh the distress unlawful, and after the distress, and before the impounding, the detainer unlawful. 2. *Inst.* 107.

But in this case, although the owner tender sufficient amends, yet he cannot take his beasts out of the pound, if the amends be refused, but he must replevy; and if it be found at the trial that the amends was not sufficient, the person on whom they trespassed shall have damages; but if the amends tendered were sufficient, then the owner of the beasts shall have damages.

II. What

II. *What Goods may be distrained, and what not.*

DISTRESSES are to be of a thing valuable, whereof somebody hath a property: goods, cattle, not of the plough, &c. sheaves of corn, corn in the straw, or threshed, carts with corn, hay in a barn, or ricks of hay, money in a bag sealed, &c. may be distrained. 1. *Inst.* 47. 2. *W. & M.*

What goods
may be dis-
trained, &c.

Cattle of the plough, beasts of husbandry, horses joined to a cart with a rider upon it, a horse with a rider upon his back, or a horse in an inn, an ax in a man's hand cutting down wood, or any thing a person carries about him, utensils and instruments of a man's trade or profession, or the books of a scholar, corn in a mill, or goods in a market to be sold for the use of the publick, materials in a weaver's shop for making of cloth, another person's garment in the house of a taylor, &c. are not distrainable; nor is any thing that is fixed to the freehold of a house, as a furnace, doors, windows, boards, &c. 1. *Sid.* 422. 440. 1. *Inst.* 47. 2. *Danv. Abr.* 641. The arms and accoutrements of the male inhabitants of this province liable to muster, are not distrainable, either for rent, or by execution.

III. *At what Time the Distress shall be taken.*

FOR rent, the landlord cannot distrain in the night, but in the day-time; but for damage feasant, one may distrain in the night, otherwise it may be the beasts will be gone, before he can take them. 1. *Inst.* 142.

If a man come to distrain, and see the beasts in his foil, and the owner chase them out of purpose before the distress taken, yet the owner of the foil cannot distrain them, if he doth, the owner of the cattle may rescue them, for the beasts must be damage feasant at the time of the distress.

Damage fea-
sant.

IV. *That reasonable Distress shall be taken.*

DISTRESSES shall be reasonable, and not too great, and he that taketh great and unreasonable distresses shall be grievously amerced. 52. *H.* 3. c. 4. For example, if the distrainer take two or three oxen for Twenty shillings, or the like small

Distress to be
reasonable.

small sum, and the owner bring a replevin of the oxen, and the distrainer avow the taking of them, for the Twenty shillings of his own shewing, he shall make fine, or the party may have his action. 2 *Inst.* 107.]

V. Manner of making Distress.

Breaking
gates.

GATES or inclosures may not be broke open, nor thrown down to make distress. 1. *Inst.* 161. Nor may the landlord enter into the tenant's house unless the doors are open.

VI. Sale of the Distress.

Sale.

WHERE any goods shall be distrained for rent upon lease or contract, and the tenant or owner of the goods distrained, shall not, within five days after such distress taken, and notice thereof (with the cause of such taking) left at the chief mansion-house, or other most notorious place on the premises, replevy the same; in such case, the person distraining shall, with the constable of the parish or place where such distress shall be taken, cause the goods or chattels so distrained, to be appraised by two appraisers, sworn to appraise the same truly, according to the best of their understandings; and after such appraisement shall sell the same for the best price can be gotten for them, for satisfaction of the rent, and charges of the distress; leaving the overplus (if any) with the constable, for the owner's use. 2. *W. sess.* 1. c. 5.

VII. Rent in case of an Execution.

Execution.

NO goods being on any messuage, lands or tenements, leased for life, term of years, at will, or otherwise, shall be liable to be taken by execution, unless the party at whose suit the execution is sued out, shall, before the removal of such goods from off the premises, pay to the landlord or his attorney, all such rent as shall be then due for the premises, provided that it amount not to more than one year's rent; then the party paying such landlord one year's rent, may proceed to execute his judgment. 8. *Ann.* c. 14. §. 1.

Escape.

Escape.

This is to be understood of escapes in criminal cases, and not in civil cases, as for debt or the like. An escape is, where one that is arrested gaineth his liberty before he is delivered by course of law. Escapes are of three kinds; 1. By a person who hath the offender in his custody. 2. Caused by a stranger; this is commonly called a Rescue. 3. By the party himself, either without force, which is simply an escape, or with force, which is prison-breaking; concerning which we will treat.

I. Of Escape by the Party himself.

II. Escape suffered by a private Person.

III. Escape suffered by an Officer.

IV. What is a voluntary, and what a negligent Escape.

V. Concerning the retaking of a Person escaped.

VI. Punishment of an Escape.

I. Of Escape by the party himself.

AS all persons are bound to submit themselves to the judgment of the law, and to be ready to be justified by it, whoever in any case refuses to undergo that imprisonment which the law thinks fit to put upon him, and frees himself from it by any artifice, before such time as he is delivered by due course of law, is guilty of a high contempt, punishable with fine and imprisonment. 2. *Haw.* 122.

Any place whatsoever, wherein a person under a lawful arrest for a supposed crime is restrained of his liberty, whether in the stocks or street, or in the common goal, or the house of a constable, or private person, is properly a prison; for imprisonment is nothing else but a restraint of liberty, 2. *Haw.* 124. And therefore this extendeth as well to a prison in law, as to a prison indeed. 2. *Inst.* 589.

But there must be an actual breaking; for if the door be open, and he goes out, it is not felony, but a misdemeanour only. 2. *Haw.* 125.

Those who have broken prison are not bailable by justices of the peace, and that for two reasons: 1. Because it carries a

pre-

presumption of guilt. And, 2d, Because it is a superadded offence to the former, for which they stood committed. 2. H. H. 133.

II. *Escape suffered by a private Person.*

Escape by a private person.

IF seems to be a good general rule, that wherever any person hath another lawfully in his custody, whether by an arrest made by himself or another, he is guilty of an escape, if he suffer him to go at large, before he hath discharged himself of him, by delivering him over to some other, who by law ought to have the custody of him. And the law is generally the same in relation to escapes suffered by private persons as by officers. 2. H. 138.

III. *Escape suffered by an Officer.*

Escape by an officer.

IN order to make it an escape, there must be an actual arrest; and such arrest must be also justifiable, for if it be either for a supposed crime, where no such crime was committed, or for such a slight suspicion of an actual crime, and by such an irregular mittimus, as will neither justify the arrest nor imprisonment, the officer is not guilty of an escape, by suffering the prisoner to go at large. 2. Haw. 129.

Too much liberty an escape.

If an officer suffers a prisoner to have greater liberty than by law he ought to have; as to admit a person to bail who ought not to be bailed, but to be kept in close custody, it is an escape. 2. H. 129. So if a goaler, or other officer, shall licence his prisoner to go abroad for a time, and to come again, this is an escape, because the prisoner is found out of the bounds of his prison, though he return again. Dalt. c. 159.

IV. *What is a voluntary and what a negligent Escape.*

Voluntary escape what

WHEREVER an officer, having the custody of a prisoner charged with a capital offence, doth knowingly give him his liberty, with an intent to save him from his trial or execution, this is a voluntary escape. 2. Haw. 130.

Negligent escape.

A negligent escape is, when the party arrested or imprisoned, doth escape against the will of him who arrested or imprisoned him; and is not freshly pursued and taken again before he hath lost the sight of him. Dalt. c. 159.

V. Concerning the retaking of a Person escaped.

AN officer who hath negligently suffered a prisoner to escape, may retake him wherever he finds him, without mentioning any fresh pursuit; and indeed, since the liberty gained by the prisoner is wholly owing to his own wrong, there seems to be no reason he should take any manner of advantage from it. 2. *Haw.* 131, 132.

Where a person is lawfully arrested for any cause, and afterwards he escapes and shelters himself in a house, the doors may be broke open to take him, on refusal of admittance. 2. *H.* 87.

Retaking.
Breaking doors to retake.

VI. Punishment of an Escape.

WHEREVER a person is found guilty upon an indictment or presentment of a negligent escape of a criminal actually in his custody, he is punishable by fine and imprisonment, according to the quality of the offence. 2. *Haw.* 136, 139.

Of a negligent escape.

If a prisoner for felony break the goal, this seems to be a negligent escape in the goaler, because there wanted either that due strength in the goal that should have secured him, or that due vigilance in the goaler or his officers to have prevented it; and therefore it is lawful in the goaler to hamper them with irons to prevent their escape; for if goalers might not be punished for this as a negligent escape, they would be careless either to secure their prisoners or to retake them that escape. 1. *H. H.* 601.

It seems to be agreed, that a voluntary escape suffered by an officer amounts to the same kind of crime, and is punishable in the same degree; as the offence for which the party was guilty, and for which he was in custody, whether it be treason, felony, or trespass. 2. *H.* 134. But it seemeth to be clear, that no one is punishable as for felony, for the voluntary escape of a felon, but the person only who is actually guilty of it; and therefore the principal goaler is only fineable for a voluntary escape, suffered by his deputy, for no one shall suffer capitally for the crime of another. 2. *Haw.* 135.

Of a voluntary escape.

Upon due information being made to a justice of the peace of the escape of any criminal, he shall issue his warrant for the retaking of such criminal.

Evidence.

Form of an Escape-Warrant.

South-Carolina, } By I. P. one of his Majesty's Justices of the
County, } Peace of the County aforesaid.

To the Constables and Peace-Officers within the said County,

WHEREAS A. C. one of the lawful constables of the said county, hath this day made oath before me, that on or about the ---- day of ---- he the said A. C. then being a constable as aforesaid, by virtue and in pursuance of a warrant for felony (or as the case shall be) against E. F. now or late of ---- labourer, duly issued by I. P. one of his Majesty's justices of ---- county, did take and arrest the body of the said E. F. And whereas the said E. F. so being taken and arrested by the said A. C. with force and arms, did make his escape from the said A. C. against the will of the said A. C. in contempt of the said warrant, and contrary to the laws in such case made and provided.

These are therefore in his Majesty's name strictly to command and enjoin you, and every of you, to make diligent search after the said E. F. and him to retake, and convey to the common goal of Charleston. And the keeper of the said goal is hereby required to receive him the said E. F. and him there safely keep, until he be from thence delivered by due course of law; and for your so doing this shall be your sufficient warrant.

Given, &c.

Evidence.

Witnesses
must be bound
over to give
evidence.

WITNESSES in case of felony, &c. must be bound in a recognizance to appear and give evidence at the next general sessions of the peace, assize, &c. and if they refuse, they may be committed or bound to the good behaviour. 2 & 3. Ph. & M. c. 10.

When a felony, &c. is committed, and information given to a justice of the peace, that a certain person is a material witness to prove the felony, he shall in such case issue his warrant for such person to appear, in order to his being bound over, to give evidence at the general sessions of the peace, &c.

Form

Form of a Warrant to summon a Witness concerning a Felon.

South-Carolina, }
County. } By I. P. one of his Majesty's Justices of the
Peace of the County aforesaid.

To any lawful Constable for the same.

WHEREAS I have been informed that a felony was lately committed at ----, and that D. W. of ---- is a material witness to prove by whom the said felony was committed: These are therefore to require you to cause the said D. W. forthwith to come before me, or some other justice of the peace for this county, to give such information as he knoweth, concerning the said offence, that such farther proceedings may be had therein as to justice doth appertain. Given, &c.

Condition of a recognizance to appear and give Evidence.

THE condition of this recognizance is such, that if the above bound D. W. shall personally appear at the next court of general sessions of the peace, assize, &c. to be holden at Charlestown on the third Wednesday in ---- next, and then and there give such evidence as he knoweth, upon a bill of indictment to be exhibited by A. I. of ---- planter, to the grand jury, against A. O. late of ---- in the said county, labourer, for the feloniously taking and carrying away ----, the property of ----; and in case the said bill be found, a true bill, then if the said D. W. shall then and there give evidence to the jurors that shall pass on the trial of the said A. O. upon the said bill of indictment, and not depart thence, without leave of the court, then this recognizance to be void, otherwise of force.

Examination.

*I*F a felony is committed, and one is brought before a justice on suspicion thereof, and the justice finds, upon examination, that the prisoner is not guilty, yet the justice shall not discharge him, but he must either be bailed or committed, for it is not fit, that a man once arrested, and charged with felony, or suspicion thereof, should be delivered upon any man's discretion, without further trial. *Dalt. c. 164.*

Examination.

In order to which bail or commitment, the examination and information of the parties must be taken, and the same or as much thereof as shall be material, must be put in writing, and certified at the next general sessions of the peace, &c. together with the recognizances of the evidences. But the examination of the person accused ought not to be upon oath. 1. H. H. 585.

But if upon his examination he shall confess the matter, it shall not be amiss that he subscribe his name or mark to it. Dalt. 164.

Examination of a Felon.

Berkley } *THE examination of A. O. of ---- yeoman,*
County, } *taken before me, I. P. one of his Majesty's justices*
of the peace of the county aforesaid, the ---- day of --- in the
---- year of the reign of ----, The said A. O. being charged be-
fore me, by A. I. of ----, yeoman, with the felonious stealing out
of the house of the said A. I. at ---- on the --- day of ----, the
following goods, to wit, ----, to the value of ----; he the said
A. O. upon his examination now taken before me, confesseth that
----, (or denieth that) &c.

Recognizance to prefer a Bill of Indictment and give Evidence.

Berkley } *BE it remembered, that on the --- day of ---, in the*
County. } *---- year of the reign of --- A. I. of ---- in the*
said county, yeoman, did come before me, I. P. one of the justices
assigned to keep the peace in the said county, and did acknowledge
himself to owe to our said Lord the King the sum of ---- procla-
mation-money of America, to be made and levied of his goods
and chattels, lands and tenements, to the use of our said Lord the
King, his heirs and successors; if he the said A. I. shall fail in
the condition underwritten.

The condition of the above recognizance is such, that if the above
named A. I. shall and do, at the next general sessions, assize, &c.
to be holden at Charlestown on the third Wednesday in --- next,
prefer, or cause to be preferred, one bill of indictment, against
A. O. late of ----, for a felony whereof he the said A. O. hath
been charged upon the information of the said A. I. and shall then
also give evidence there concerning the same, as well to the jurors
as shall then enquire of the said felony, as also to them that shall
pass

pass upon the trial of the said A. O. that then the said recognizance to be void, or else to stand in full force for the king.

Felony.

- I. Felony.
- II. Misprision of Felony.
- III. Theftbote.

I. Felony.

IT would swell this title near to the bigness of half the book, to set down every thing which may be comprehended under the word *Felony*; therefore it is necessary to refer the consideration of the several particular kinds of felonies to their respective titles, as for instance, **Homicide, Robbery, Burglary, Rape, Coin, Forgery**, and many others, and especially the laws relating to stolen goods of all kinds belongeth to the title **Larceny**. Forging, counterfeiting or uttering any bill or bills, in imitation or likeness of any of the publick bills of credit of this province, knowing the same to be counterfeited, or being any way aiding therein, is felony. The stealing of negroes and pettiaugers, is likewise made felony, without benefit of clergy. *A. A. 27 Geo. 2.*

The method for bringing a felon to justice from the first commission of the felony, is treated of under the several titles of **Hue and Cry, Arrest, Examination, Bail, Commitment, Evidence, &c.** So then there is nothing left for this place, but to take notice of one circumstance which is common to all felonies in general, and that is concerning the charges of prosecution.

The felon shall pay the charges of his carrying to goal, if able, to be levied by distress, by order of the justices of the court of general sessions of the peace, assize, &c. before whom the criminal shall be tried. But if the criminal hath no goods nor chattels within the province, to be distrained and sold for defraying the charges of carrying him to goal, nor the charges and fees of his prosecution, in such case all such charges and fees, are to be paid by the publick of this province.

*A. A. 17. G. 2.
Anno 1741.*

II. Mis-

Felony.

II. Misprision of Felony.

MISPRISION of felony is the concealing of a felony which a man knows, but never consented to; for if he consented, he is either principal or accessory in the felony, and consequently guilty of misprision of felony and more. 1 H. H. 374.

If any person will save himself from the crime of misprision, he must discover the offence to a magistrate, with all the speed he can. 3. Inst. 140.

III. Theftbote.

THEFTBOTE is, where one not only knows of a felony but takes his goods again, or other amends not to prosecute. 1 Haw. 125.

This offence is very nearly allied to Felony, and was formerly punished as such, but is now only punished with ransom and imprisonment, unless it is accompanied with some degree of maintenance given to the felon, which makes the party an accessory after the fact. 1 Haw. 125.

Warrant for Felony.

South-Carolina, } ff. By I. P. one of his Majesty's Justices of the
County, } Peace of the County aforesaid.

To any lawful Constable of the said County.

FORASMUCH as A. I. of ---, in the said county, planter, hath this day made information and complaint upon oath, before me, that this day divers goods of him the said A. I. to wit, --- have feloniously been stolen, taken and carried away, from the house of him the said A. I. at --- aforesaid, in the county aforesaid, and that he hath just cause to suspect, and doth suspect that A. O. late of ---, labourer, feloniously did steal, take and carry away the same; (or otherwise as the case shall be.) These are therefore to command you forthwith to apprehend the said A. O. and to bring him before me, to answer unto the said information and complaint, and to be further dealt withal, according to law. Herein fail you not. Given, &c.

Horrible

Forcible Entry and Detainer.

- I. What is a forcible Entry.
- II. What is a forcible Detainer.
- III. The Duty of Justices of Peace when any forcible Entry is made into Lands.

I. *What is a forcible Entry.*

IF any one or more persons come armed (especially with weapons not usually born) to a house or lands, and shall violently enter thereinto, this is a forcible entry; so likewise if one enters peaceably into a house, and forcibly puts another out of his possession. *Lamb.* 145. And also, if a person after a peaceable entry shall use any violent threatening, &c. to the intent to get the possessor out of his house, this is a forcible entry. Forcible entry what.

II. *What is a forcible Detainer.*

A Forcible detainer is a violent act of resistance by force, whereby the lawful entry of a justice, or any other person, into lands and tenements, is thereby hindered. Forcible detainer what.

If a justice comes to a house where the force is suspected to be, and find the doors and gates shut, and the party which is within deny him entrance, this is a detainer with force, though no person or arms be seen, and though there be but one person in the house, &c. *Lamb.* 148.

One person alone may commit a forcible entry or detainer; and if divers come in company to enter into any house, or lands, and if one of them commit a force, they are all guilty. *Co. Lit.* 257. If more than three, it is a riot, and they are to be proceeded against accordingly.

III. *The Duty of a Justice of Peace when any forcible entry is made into Lands, &c.*

BY the statute of 21 *Jac.* 1. c. 15: the justices have power to give restitution to tenants, as well as to freeholders put out or detained by force.

Any justice of peace, on notice of a forcible entry into, or holding or detaining of any possession at the charge of the party grieved, ought to go to the place and take the assistance of Power of justices upon the statute of 15 R. 2.
R peace-

Forcible Entry and Detainer.

peace-officers, if he thinks fit, may break open the door if resisted, and may arrest and commit the offenders; he may command any one to assist him, and commit those who refuse.

If he sees the force, he may record it, and commit the offenders, for his view is a conviction, and this record being certified in B. R. and C. Pleas, the court will grant restitution and assess a fine.

A Record of a forcible Entry.

Berkley } ff. *BE* it remembered, that on the --- day of --- in the
County, { --- year of the reign of ---- of Great-Britain,
France and Ireland, King, Defender of the Faith, and so forth,
at ---- in Berkley county aforesaid, A. C. complained to me I. P.
one of his Majesty's justices assigned to keep the peace in the said
county, that E. E. of --- into the messuage of him the said A. C.
being the mansion-house of him the said A. C. situated within the
parish of ---- in the county aforesaid, did enter, and him the
said A. C. of the messuage aforesaid, unlawfully ejected, expelled
and amoved, and the said messuage from him the said A. C. un-
lawfully, with strong hand and armed power doth yet hold, and
from him detain, against the form of the statute, in such case
made and provided; whereupon the said A. C. then, to wit, on
the ---- day of ---- at ---- aforesaid, required and prayed
of me, the remedy provided by the statute aforesaid, which com-
plaint and prayer by me being heard, I personally went to the
said messuage, and did then and there find and see the aforesaid E.
E. the aforesaid messuage, with force and arms unlawfully, with
strong hand and armed power, detaining against the form of the
statute in such case made and provided, whereupon the said E. E.
was arrested, and sent to the common goal of Charlestown, by
virtue of a mittimus duly issued by me for that purpose, concerning
which the premisses aforesaid I do make this my record. In wit-
ness whereof do hereunto set my hand and seal the ---- day of
---- in the ---- year of his Majesty's reign.

Mittimus for forcible Detainer.

Berkley } ff. By I. P. one of his Majesty's Justices of the Peace
County. { for the County aforesaid.

To the Keeper of the common Goal of Charlestown.

WHEREAS upon complaint made unto me by A. C. of ----
in the said county, I did this present day go to the dwelling-
house

house of the said A. C. aforesaid, and there did find E. E. of
 --- forcibly with strong hand and armed power holding the said
 house, against the peace of our sovereign lord the king, and against
 the form of the statutes in that behalf made and provided: there-
 fore I send you by the bringers hereof the body of the said E. E.
 convicted of the said forcible holding, by my own view, testimony
 and record, commanding you in his Majesty's name to receive him
 into your said goal, and there safely to keep him, till he shall be
 thence delivered in due course of law. Herein fail not at your
 peril. Given, &c.

Forestalling, Ingrossing and Regrating.

I. Concerning these Offences at common Law.

II. Forestalling what.

I. Concerning these offences at common Law.

AT common law, all endeavours whatsoever to enhance the
 common price of any merchandize, and all kinds of
 practices which have an apparent tendency thereto, whether by
 spreading false rumours, or by buying things in a market be-
 fore the accustomed hour, or by buying and selling again the
 same thing in the same market, or by any other such like de-
 vices, are highly criminal and punishable by fine and impri-
 sonment. 1. Haw. 234.

These offen-
 ces at com-
 mon law.

And the bare ingrossing of a whole commodity, with an in-
 tent to sell it at an unreasonable price, is an offence indictable at
 common law, whether any part thereof be sold by the ingrosser
 or not. 1. Haw. 235.

II. Forestalling what.

WHOSOEVER shall buy, or cause to be bought, any
 victuals or provisions of any sort, within Charlestown,
 or coming to the market there, before nine o'clock in the morn-
 ing, or make any bargain, contract or promise, for the having
 or buying the same, or any part thereof, with an intent to sell
 the same again, upon pain of the forfeiture of all such victuals
 or provisions so bought, bargained for, forestalled, regrated or
 ingrossed.

Forestalling
 what.

Forgery.

ingrossed; and also the sum of Five Pounds current money, to be recovered by warrant under the hands and seals of any three of the commissioners of the market, and levied by distress of the offender's goods and chattels. *A. A. 9. G. 2. Anno 1736.*

Forgery.

1. **F**ORGERY is an offence at common law, and an offence also by statute.

2. Forgery at the common law is an offence in falsely and fraudulently making or altering any manner of record, or any other authentick matter of a publick nature. *1. Haw. 182.*

3. By statute; if any person, upon his own head and imagination, or by false conspiracy and fraud with others, shall wittingly, subtilly and falsely, forge or make, or subtilly cause, or willingly assent to be forged or made, any false deed, charter, or writing sealed, court-roll, or the will of any person in writing, to the intent that the state of freehold, or inheritance of any person, of any lands, tenements, hereditaments, freehold or copyhold, or the right, title, or interest, of any person in the same, may be molested, troubled, defeated, recovered, or charged; or shall pronounce, publish, or shew forth the same in evidence as true, knowing the same to be false, and forged, to the intent as above, and shall be thereof convicted, he shall pay to the party double costs and damages, and be set in the pillory, and have both his ears cut off and his nostrils slit, and seared with a hot iron, and shall forfeit the profit of his lands during life, and be imprisoned also during life. *5 Eliz. c. 14.*

If any person shall falsely make, forge, or counterfeit, or cause or procure the same to be done, or willingly aid or assist in the false making, forging, or counterfeiting any deed, will, bond, or writing obligatory, bill of exchange, promissary note, acquittance or receipt for money or goods, with intent to defraud any person, or shall utter or publish the same as true, knowing the same to be forged, he shall be guilty of felony without benefit of clergy, but not to work corruption of blood, or disherison of heirs. *2. G. 2. c. 25. P. 1. 5.*

And, by the *7. G. 2. c. 22.* it is further enacted, by way of addition to the foregoing, that if any person shall falsely make, alter,

alter, forge, or counterfeit, or willingly act, or assist in the false making, altering, forging, or counterfeiting any acceptance of any bill of exchange, or the number or principal sum of any accountable receipt for any note, bill, or other security for the payment of money, or any warrant or order for the payment of money, or delivery of goods, with intent to defraud any person, or shall utter and publish the same as true, with intent to defraud any person, knowing the same to be false, he shall be guilty of felony without benefit of clergy, and this without any saving of the corruption of blood, or disherison of heirs.

Justices of peace, upon receiving information of any person having been guilty of forgery, are to bind over the informers, examine the offender, certify his examination to the justices of the general sessions of the peace, assize, &c. and commit him to prison, in order to abide his trial.

Gaming.

ALL bills, bonds, judgements, mortgages, or other securities or conveyances whatsoever, (negotiable bills excepted) given, granted, drawn, entered into, or executed by any person or persons whatsoever, where the consideration of such conveyances or securities shall be for any money, or other valuable thing whatsoever, won by gaming or playing at cards, dice, tables, tennis, bowls, or other game or games, bet or bets, chance or chances, of any kind whatsoever, or by betting on the sides of hands of such as do game at any of the games aforesaid, or for the reimbursing or repaying any money knowingly lent or advanced for such gaming or betting, or lent and advanced at the time and place of such play, to any person or persons so gaming or betting, or who shall during such play, so play or bet, shall be utterly void, frustrate, and of none effect, to all intents and purposes whatsoever: And where such mortgages, securities, or other conveyances shall be of lands, tenements, or hereditaments, or such as incumber or affect the same, they shall, notwithstanding, enure and be, to and for the sole use and benefit of, and devolve upon such person or persons, as should or might have, or be entitled to such lands, &c. the same as if such mortgages, &c. had never been made; and all such

A. A. 25. G. 2.
Anno 1752.

Securities for monies or goods won or lent at gaming shall be void.

such grants or conveyances shall be deemed fraudulent and void, and of none effect, to all intents and purposes whatsoever.

Any person losing to the value of 5 l. may within a month sue for and recover the same, &c.

If any person or persons shall, at at any time or times setting or settings, within the space of twenty four hours, by playing at cards, dice, tables, or other game or games whatsoever, or by betting on the sides or hands of such as do play, lose to any one or more person or persons in the whole, the sum of Five pounds current money of this province, and shall pay and deliver the same, or any part thereof, the person or persons so losing and paying, or delivering the same, shall be at liberty within one month, then next following, and not after, to sue for and recover the money or goods so lost and paid, or delivered, or any part thereof, from the respective winner and winners thereof, with costs, by warrant from a justice of the peace, in nature of a warrant for debt, in case the the money or goods so lost and paid or delivered, above the value of Five pounds shall not exceed the value of Twenty pounds, current money; and in case the money or goods, so lost and paid or delivered, exceed the value of Twenty pounds current money, the loser shall and may, recover the same, from the winner or winners, with costs, by action of debt, to be prosecuted in his Majesty's Court of Common Pleas, in this province.

In case the person or persons who shall lose such money or other thing as aforesaid, and shall not within one month thereafter, sue for, and with effect prosecute for the money or other thing so by him or them lost and paid or delivered; any other person or persons, by such action and suit as aforesaid, may sue for, and recover the same, and treble the value thereof, with costs of suit, against such winner or winners; unless such winner or winners shall, within ten days after winning such money or thing, repay, or redeliver the same to the loser, together with the costs, which may have then accrued; one moiety of which penalty to be given to the person or persons that sue for the same; and the other to the poor of the parish where the offence shall be committed.

Persons sued must answer upon oath.

All and every person or persons liable to be sued for gaming are obliged and compellable to answer upon oath, for discovering the sum or sums of money, or other things so won and received at play.

If

Gaming.

III

If any person or persons, at any time or times, do or shall, by fraud or shift, couzenage, circumvention, deceit or unlawful device, or ill practice, in playing at and with cards, or at any other game, or in bearing a share or part in the stakes, or in, or by betting on the sides or hands of such as do play, win, obtain or acquire to him or themselves, or to any other or others, any sum or sums of money, or other valuable thing or things, every person or persons so winning by such ill practices being convicted thereof, upon an indictment or information to be exhibited against him or them for that purpose, shall forfeit five times the value of the sum or sums of money, or other thing so won, and shall suffer such corporal punishment, as the court before whom the same shall be tried, shall think fit to inflict, not extending to loss of life or member; and such penalty to be recovered by the person or persons who shall sue for the same.

How persons
are to be pu-
nished who
practice frauds
in gaming, &c.

Any justice unto whom complaint shall be made, of any offence committed against this act within his jurisdiction, shall issue his warrant for bringing before him, or the next justice, the person charged with such offence; and the justice before whom he is brought shall hear and determine the matter, and proceed to judgment and conviction; and if it shall appear upon oath, to the satisfaction of such justice, that any person within his jurisdiction can give material evidence in the behalf of the prosecutor, or of the person accused, and who will not voluntarily appear, he shall issue his summons to convene him to give his evidence; and if he shall neglect or refuse to appear on such summons, and no just excuse shall be offered, then (on proof upon oath of the summons having been duly served upon him) he shall issue his warrant to bring such witness before him, and on his appearance, if he shall refuse to be examined upon oath, without offering just cause for such refusal, the justice shall commit him for contempt.

The act of assembly, 32. Geo. 2. Excludes insolvent debtors from the benefit of the said act, who shall lose, at any game whatever, or by betting on the sides or hands of those that do game, in one day, Five Pounds proclamation-money, or in the whole the sum of Twenty Pounds like money, within the space of twelve months next preceeding his or her petition to the court for the benefit of the said act.

Form

Goal and Goaler.

Form of a Conviction and Judgement.

Berkley } *B* *E* it remembered, that on this ---- day of ----, in
 County. } *the* --- year of his Majesty's reign, A. G. is con-
 victed before me, I. P. one of his Majesty's justices of the peace for
 the said county, for having at ----- upon the ----- day of -----
 played at cards, (or other game, as the case shall be)
 with E. L. and within the space of twenty-four hours, won and
 received of him the said E. L. the sum of Twenty pounds, current
 money of this province, or goods to that value (as the case shall be)
 contrary to the act of assembly in that case made and provided. I
 do therefore adjudge that the said A. G. do repay or redeliver imme-
 diately to the said E. L. the said sum of Twenty pounds, as also his
 costs in this suit. I. P.

If the defendant do not immediately comply with this judg-
 ment, then execution shall be issued against his goods and chat-
 tels, in the same manner as is directed in the act for the trial of
 small and mean causes.

Goal and Goaler.

- I. Who shall have the keeping of the Goal.
- II. Goaler shall receive Criminals.
- III. How they shall be maintained.
- IV. How they shall be delivered.
- V. Of Goalers permitting Escapes.

I. Who shall have the keeping of the Goal.

THE Provost-Marshal of this province, being vested with
 the same powers and authorities, and intitled to the same
 fees, perquisites, privileges, liberties and immunities, as the
 sheriff, under-sheriff, and goal-keeper in the several counties in
 Great-Britain; for that reason is made subject to the same bur-
 dens, and liable to the penalties and forfeitures. *A. A. 4 Geo.*
2. Anno 1731.

The goal itself is the King's, but the keeping thereof is inci-
 dent to the office of provost-marshal, and inseparable from it;
 and

and therefore the Provost-Marshal shall put in such keepers for whom he will answer.

II. *Goaler shall receive Criminals.*

ALL felons shall be imprisoned in the common goal of Charlestown, and not elsewhere.

And if the goaler refuses to receive a felon, or take any thing for receiving him, he shall be punished for the same by the justices of goal-delivery. 4. *Edw. 3. c. 10.*

III. *How they shall be maintained.*

THE goaler cannot refuse the prisoner victuals, for he ought not to suffer him to die for want of sustenance. 1. *Inst. 295.* which shall be paid for by a sum provided yearly by the tax-law for that purpose.

IV. *How they shall be delivered.*

BY the 3. *H. 7. c. 3.* those that have the custody of goals must certify the names of all prisoners to the justices of goal-delivery, in order to their trial or discharge, on pain of Five Pounds sterling.

And if a goaler detains a prisoner in goal after his acquittal, unless it be for his fees (not for meat, drink or lodging) this is an unlawful imprisonment, 2. *Inst. 53.* And a goaler must not disobey a writ of *Habeas Corpus* for want of his fees.

V. *Of Goalers permitting Escapes.*

IF the goaler voluntarily suffer a prisoner to escape, he shall be punished in the same manner as the prisoner ought to have been who made his escape: and if he negligently suffer him to escape, he shall be punished by fine and imprisonment; and the Provost-Marshal shall answer for him. 2. *Haw. 134.*

And for a negligent escape suffered by his deputy, he is as much liable to answer as if he had actually suffered it himself; and the court may charge either him or his deputy for it: and if a deputy goaler be not sufficient to answer a negligent escape, his principal must answer for him. 2. *Haw. 135.*

Hawkers and Pedlars.

Licence duty.

BY act of assembly 10. G. 2. *Anno* 1737, there shall be paid by every hawker, pedlar, petty chapman, or any other trading person going from town to town, or to other mens plantations, and trading either on foot or with horse, pettiaugas, boats, canoes, or otherwise (except as is after excepted) carrying to sell, or exposing to sale, any rum, sugar, or other goods, wares or merchandize, a duty of One hundred Pounds current money of this province for a licence to travel by water; as also the sum of One hundred Pounds like money *per annum* for each pettiauger, boat, canoe, or other vessel, he or she shall travel with; and for every licence to travel by land the sum of Fifty Pounds like money; as also the sum of Fifty Pounds like current money *per annum* for each horse, ass, mule, or other beast of burden he or she shall so travel with.

Manner of taking out the licence.

Every hawker, pedlar, &c. shall deliver or cause to be delivered to the publick-treasurer, or receiver, a note in writing under his or her hand, or under the hand of some person by him or her authorised in that behalf, how and in what manner he or she will travel and trade, whether by land or by water, whether on foot or with a horse or horses, ass or asses, mule or mules, or other beast or beasts of burden, pettiauger or pettiaugers, canoe or canoes, or other vessel or vessels, for his or her so travelling and trading, for which he or she shall thereupon pay or cause to be paid to the publick-treasurer, one moiety of the duty, and give security by bond, with one or more sufficient surety or sureties, to be taken in his Majesty's name, for the payment of the other moiety of the said duty, and for his or her good behaviour, and not to trade or commit any offence contrary to the true intent and meaning of this act, thereupon a licence shall be given by the publick-treasurer, which licence shall be renewed yearly.

Trading without a licence, or refusing to shew it.

If any such person be found trading as aforesaid, without, or contrary to such licence; or if by demand made by any justice of the peace, constable, or other officer of the peace of the county or town where he or she shall so trade, shall not have his or her licence ready to be produced, shall forfeit Two hundred Pounds current money, to be paid to the church-wardens of the parish where such demand shall be made, to the

use

use of the poor of the same; and for non-payment thereof, shall suffer as a common vagrant, and be sent to the common goal of Charlestown, there to remain till such forfeiture shall be paid or satisfied.

If any person shall travel with a licence granted to any other person than to him or herself, or shall forge or counterfeit any licence or licences, or travel with such forged or counterfeited licences, he or she shall forfeit Four hundred Pounds current money, half to the king, and half to him that shall sue for the same, in the court of Common Pleas; and shall also be liable to be punished for forgery.

Lending and counterfeiting licences.

If any person shall buy, sell, bargain, contract, barter, give, lend or exchange, any manner of goods or commodities to, for, or with any slave or slaves, indented servant or servants, or overseer, without the privity or consent of his or their master or mistress, he or she so offending shall forfeit his or her security-bond, and be deemed incapable of taking or receiving a licence for the future.

Penalty for dealing with slaves.

Any person or persons may seize and detain any pedlar, or other trading person with his goods and merchandise, till such time as he produce a licence in that behalf; and if found trading without a licence, till such time as notice may be given to the constable, church-warden, or some other parish-officer, who are to carry such person so seized before some of his Majesty's justices of the peace of the county where such offence shall be committed, who, upon the confession of the party, or due proof made by witnesses upon oath, that the person so brought before him had so traded, and no licence produced by such offender, then the justice is to cause the sum of Two hundred Pounds current money to be levied by distress and sale of the offender's goods, wares and merchandize, rendering the overplus (if any be) to the owner, after deduction of reasonable charges.

Trading without a licence to be carried before a justice of the peace.

If any constable, church-warden, or other officer aforesaid, shall refuse or neglect, upon due notice, or on their own view, to be aiding and assisting in the execution of this act, being thereunto required, each and every such officer and officers being thereof convicted by the oath or oaths of one or more credible witness or witnesses, before a justice of the peace of the county where the offence is committed, shall forfeit Twenty Pounds current money for every such offence, to be levied by

Penalty on a constable, &c. refusing to do what is required by this act.

Exception.

distress and sale of the offenders goods, by warrant under the hand and seal of a justice of the peace: but nothing herein contained shall extend or be construed to extend to hinder any person or persons from selling or exposing to sale any sorts of goods or merchandises in any publick market or fair within this province.

Homicide.

Homicide signifies the killing of a man by a man, and includes in it the several offences which are treated of, in the following sections;

- I. Justifiable Homicide.
- II. Homicide by Misadventure.
- III. Homicide by Self-Defence.
- IV. Manlaughter.
- V. Murder.
- VI. Self-Murder.

I. Justifiable Homicide.

On a real necessity.

1. **T**O make homicide justifiable it must be owing to some unavoidable necessity, to which the person who kills another must be reduced, without any manner of fault in himself. And there must be no malice coloured under pretence of necessity; for wherever a person who kills another, acts in truth upon malice, and takes occasion from the appearance of necessity to execute his own private revenge, he is guilty of murder. 1 *Haw.* 69.

Killing robbers and burglars.

2. If any evil disposed person shall attempt feloniously to rob or murder any person, in any dwelling-house or high-way, or feloniously attempt to break any dwelling-house in the night-time, and shall happen in such felonious intent to be slain, the slayer shall be discharged, and shall forfeit no lands nor goods. 24 *Hen.* 8. c. 5.

Ravishers.

3. If a woman kill him that assaulteth to ravish her, it is no felony. *Hale's Pl.* 39.

Felons refusing to be arrested.

4. If a person having actually committed a felony, will not suffer himself to be arrested, but stand on his own defence, or fly,

fly, so that he cannot possibly be apprehended alive, by those who pursue him, whether private persons or publick officers, with or without a warrant from a magistrate, he may lawfully be slain by them. 1 *Haw.* 70.

5. So if a person arrested for felony, break away from his conductors to goal, they may kill him, if they cannot otherwise take him; but in this case likewise there must have been a felony actually committed. *Hale's Pl.* 36, 37. Felons escaping.

6. Also if a criminal endeavouring to break the goal, assault his goaler, he may be lawfully killed by him in the affray. 1. *Haw.* 71.

7. In all these cases the party must be tried, and upon his arraignment having pleaded not guilty, the special matter must be found, whereupon the party shall be dismissed without any forfeiture or pardon purchased. *Hales Pl.* 38.

II. Homicide by Misadventure.

1. **HOMICIDE** by misadventure is, where a man is doing a lawful act, without intent of hurt to another, and death casually ensues. *Hale's Pl.* 31.

2. As where a labourer being at work with a hatchet, the head flies off, and kills one who stands by, or where a person whips a horse on which a man is riding, whereupon he springs out and runs over a child and kills him: in which case the rider is guilty of homicide by misadventure, and he who gave the blow of manslaughter. 1. *Haw.* 73.

3. Although this homicide is not properly a man's crime, but his misfortune, yet because the king hath lost his subject, and in respect of the great favour the law hath to the life of a man, and to the end that men should use all care, diligence and circumspection in all they do, that no hurt should come of their actions, a person convicted hereof shall forfeit his goods, and shall not presently be discharged of his imprisonment, but bailed, that he may sue out his pardon, which he shall have of course. Forfeiture.

III. Homicide by Self-Defence.

1. **HOMICIDE** in a man's own defence seems to be, where one who hath no other possible means of preserving his life from one who combats with him on a sudden quarrel, kills the Self-Defence what.

the person by whom he is reduced to such an inevitable necessity.

Cases of self-defence.

2. And not only he, who upon an assault retreats to a wall, or some such strait beyond which he can go no further, before he kills the other, is adjudged by the law to act upon unavoidable necessity, but also he, who being assaulted in such manner, and in such a place, that he cannot go back without manifestly indangering his life, kills the other without retreating at all.

1. *Haw.* 75.

3. An officer who kills one that resists him in the execution of his office, and even a private person that kills one, who feloniously assaults him in the high-way, may justify the fact without ever giving back at all. 1 *Haw* 75.

Accessaries.

4. Hereof there can be no accessaries, either before or after the fact, because it is not done with a felonious intent.

5. A person convicted hereof, shall not be discharged out of prison but upon bail, and shall forfeit all his goods, although the cause was inevitable; and this by reason the law intends it had a beginning upon an unlawful cause; for quarrels are not presumed to grow without some wrongs in words or deeds, and so malice on both sides; but he shall have his pardon of course.

3. *Inst.* 56.

IV. Manslaughter.

Manslaughter what.

1. **B**Y manslaughter is to be understood such killing of a man as happens either on sudden quarrel, or in the commission of an unlawful act, without any deliberate intention of doing any mischief at all. 1. *Haw.* 76.

Without malice.

As if two meet together, and striving for the wall, the one kill the other, this is manslaughter and felony: and so it is if they had upon that sudden occasion gone into the field and fought, and the one had killed the other, this had been but manslaughter; because all that followed was but a continuance of the first sudden occasion, and the blood never cooled till the blow was given. 3. *Inst.* 55.

Clergy.

2. This offence is within the benefit of clergy; but the offender shall forfeit as in other felonies. 2. *H. H.* 344.

3. There is one kind of manslaughter, which by the statute of the 1. *Jac.* c. 8. is excluded the benefit of clergy, viz. he who shall stab or thrust any person that hath not then any weapon drawn, or hath not then stricken first, so as the person

so

so stabbed or thrust, shall die thereof in six months, although it cannot be proved that the same was done of malice forethought, shall be guilty of felony without the benefit of clergy.

V. Murder.

MURDER is, when a man of sound memory, and of the Murder what. age of discretion, unlawfully killeth any person under the king's peace, with malice forethought, either expressed by the party, or implied by law, so as the party wounded or hurt die of the wound or hurt, within a year and a day. 3. *Inst.* 47.

1. Malice implied is in several cases; as when one voluntarily kills another, without any provocation; for in this case Cases of murder. the law presumes it to be malicious, and that he is a publick enemy of mankind. 1. *H. H.* 455, 456.

2. Malice expressed is a deliberate intention of doing any bodily harm to another, whereunto by law a person is not authorised. 1. *H. H.* 451.

3. Poisoning also implies malice, because it is an act of deliberation.

4. In general, any formed design of doing mischief, may be called malice; such as is accompanied with those circumstances that shew the heart to be perversely wicked, is adjudged to be of malice prepense, and consequently murder. 2. *Haw.* 80.

5. The principal in murder is ousted of clergy in all cases, Accessaries. and the accessary before is also ousted of clergy in all cases; but the accessary after is in no case ousted of clergy. 2. *H. H.* 344.

VI. Self-Murder.

1. **A** Felon of himself is a person who being of sound mind, A felon of himself. and of the age of discretion, voluntarily killeth himself. But if a man give himself a wound, intending to be a felon of himself, and dieth not within the year and day after the wound, he is not a felon of himself. 3. *Inst.* 54.

2. The offender herein doth incur a forfeiture of goods and Forfeiture. chattels, but not of lands.

None of the foregoing offences under this title, areailable by justices of peace of this province; their duty upon receiving information upon oath, of any of the said offences being committed

Homicide.

mitted, is to issue a warrant for apprehending the offender, to the intent he may be examined, which examination is to be in writing, but not upon oath.

The examinations of the witnesses against such offenders are to be in writing, and upon oath, and also signed by them; they must likewise be bound separately in recognizances to prefer a bill of indictment, or to give evidence at the next general sessions of the peace, assize, &c. which examinations and recognizances must be lodged in the office of the clerk of the crown and peace eight days before the sitting of the court.

Form of a warrant to apprehend a person charged with manslaughter.

Berkley } ff. By I. P. one of his Majesty's Justices of the Peace
County. } for the County aforesaid.

To the Constables and other Peace-officers of the said County.

WHEREAS A. I. of ----, in the said county, yeoman, hath this day made information, upon oath, before me, that this present day, he being in company with M. O. and C. D. at ----, a sudden quarrel did then happen, between the said M. O. and C. D. and that the said M. O. did then give several blows or wounds (as the case shall be) to him the said C. D. whereof he instantly died: These are therefore to command you, forthwith to apprehend him the said M. O. and to bring him before me, to answer unto the said information, and to be further dealt withal according to law. Herein fail you not. Given under my hand and seal the ---- day of ---- in the year ----.

Examination of one charged with manslaughter.

South-Carolina, } ff. *THE* examination of M. O. of ----, yeoman, taken before me I. P. one of his Majesty's justices of the peace of the said county, the ---- day of ----, in the ---- year of the reign of ----. The said M. O. being charged before me, by A. I. of ----, yeoman, with having, on the ---- day of ----, at ---- given several blows or wounds (as the case shall be) to C. D. late of ----, labourer, whereof he the said C. D. instantly died: He the said M. O. upon his examination now taken before me, confesseth, That ---- (or denieth that ----) &c.

N. B.

Bue and Cry.

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N. B. Felonies, and other crimes of a high nature, are much oftener committed where no witness or witnesses is, or are present than otherwise; but in all such cases an information founded upon strong and presumptive circumstances of guilt, against the person charged upon suspicion, is to be equally regarded by justices of the peace in this province as if the same was positively sworn to; for they have no power to hear and determine such offences, therefore must commit whether the evidence be positive or presumptive.

Mittimus for Manlaughter.

South-Carolina, { ff. By I. P. one of his Majesty's Justices of the
County. } Peace of the County aforesaid.

To any lawful Constable of the said County, and to the Keeper of the common Goal of Charlestown.

WHEREAS M. O. of ---- yeoman, was this day brought before me, and charged by the information upon oath of A. J. of ---- labourer, with having at ---- on the ---- day of --- in a sudden quarrel which then and there happened between him, and C. D. of ---- yeoman, given several blows or wounds to him the said C. D. whereof he instantly died.

These are therefore in his Majesty's name and behalf to command you the constable aforesaid, forthwith to convey the said M. O. to Charlestown, and deliver him to the keeper of the common goal there; hereby requiring you the keeper of the said goal to receive into your custody the said M. O. there to remain till he be delivered from your custody according to law.

Given under my hand and seal the ---- day of ---- in the ---- year of his Majesty's reign.

Bue and Cry.

1. **H**UE and cry is the old common law-process after felons, Hue and cry and such as have dangerously wounded any person: what. and this hath received great countenance and authority by several acts of parliament. 2. H. H. 98.

2. When any felony is committed, or any person is grievously and dangerously wounded, or any person assaulted and offered to be robbed, either in the day or night, the party grieved, or any other, may resort to the next constable, and, first, give him

R.

such.

Hue and Cry.

such reasonable assurance thereof as the nature of the case will bear; 2d, If he knows the name of him that did it he must tell the constable the same; 3d, If he knows it not, but can describe him, he must describe his person or his habit, or his horse, or such circumstances as he knows, which may conduce to his discovery; 4th, If the thing be done in the night, so that he knows none of these circumstances, he must mention the number of the persons, or the way they took; 5th, If none of all these can be discovered, as where a robbery or burglary, or felony, is committed in the night, yet the constable must be acquainted of the fact, and desired to search in his precinct for suspected persons, and to make hue and cry after such as may be probably suspected, as being persons vagrant in the same night; for many circumstances may after the deed be useful for discovering a malefactor, which cannot be at first found.

2. *H. H.* 100.

3. For levying hue and cry, although it is a good course to have the warrant of a justice of the peace, when time will permit, in order to prevent causeless hue and cry, yet by the frames of the statute it is by no means necessary, nor is it always convenient; for the felon may escape before the warrant is obtained. 2. *H. H.* 99.

4. The duty of the constable is, to raise the power of his district, as well in the night as in the day, for the prosecution of the offender. 3. *Inst.* 116.

5. Upon hue and cry levied against any person, or where any hue and cry comes to a constable, whether the person be certain or uncertain, the constable may search suspected places within his district for the apprehending of the felons. 2. *H. H.* 103.

6. If the person against whom the hue and cry is raised be not found in the constablewick, then the constable shall give notice to the next constable, and he to the next, until the offender be found, or till they come to the sea-side. 3. *Inst.* 116.

7. The constable of the district where the felony was done, as also every constable to whom the hue and cry shall afterwards come, ought to send to every other town round about him, and not to one next town only: and in such cases it is needful to give notice in writing, to the pursuers, of the things stolen, and of the colour and marks thereof; as also to describe the person of the felon, his apparel, horse, and the like, and which way he is gone, if it may be. *Dalt. c.* 54.

8. No

Hue and Cry.

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8. No hue and cry shall be lawful except it be by horsemen and footmen. 27. *Eliz. c. 13. §. 10.* And the life of hue and cry is fresh suit. 3. *Inst. 117.*

9. It seems they who are taken upon fresh hue and cry are notailable, as being to be accounted amongst those persons who are under a violent presumption of guilt. 2. *H. 98.*

Warrant to levy hue and cry on a Robbery having been committed.

Berkley } ff. By I. P. one of his Majesty's Justices assigned to
County. } keep the Peace in the said County.

To all Constables and other Officers, as well in the said County as elsewhere, to whom the Execution hereof doth or shall belong.

WHEREAS A. I. of ----, in the county of ----, yeoman, hath this day made information upon oath before me, that on this present ---- day of ---- in the ---- year of the reign of ----, in the said county of ----, in the King's high-way there, two malefactors and felons to him the said A. I. unknown, in and upon him the said A. I. then and there being, in the peace of God, and of our lord the king, feloniously did make an assault, and him the said A. I. then and there feloniously did put in great fear and danger of his life; and the sum of ---- current money of the province aforesaid, of the goods and chattels of him the said A. I. from the person, and against the will of him the said A. I. then and there violently and feloniously did steal, take, and carry away; and that one of the said felons to him the said A. I. unknown, is a tall strong man, and seemeth to be about the age of ---- years, is pitted in the face with the small-pox, and had then on (here describe the habit) and did ride upon (here describe the horse) and the other (here describe him). And that after the felony and robbery committed they the said felons, to him the said A. I. unknown, did fly and withdraw themselves to places unknown, and are not yet apprehended: These are therefore to command you forthwith to raise the power of the parishes within your several precincts, and to make diligent search therein for the persons above described, and to make fresh pursuit, and hue and cry after them, from county to county, as well by horsemen as by footmen, and to give due notice hereof in writing, describing in such notice the persons and offence aforesaid unto every next constable on every side, until they

Warrant to
levy hue and
cry.

Judgment.

they shall come to the sea-shore, or until the said malefactors shall be apprehended; and all persons whom you or any of you shall, upon such search and pursuit apprehend, or cause to be apprehended, as justly suspected for having committed the said felony, that you do carry him or them forthwith before some one of his Majesty's justices of the peace for the county where he or they shall be so apprehended, to be examined and dealt withal according to law. Hereof fail you not respectively, upon the peril that shall ensue thereupon. Given, &c.

Judgment.

Judgments certain.

1. **O**F judgments, some are fixed and stated, as in cases of treason, felony, premunire and misprisions, the particular forms of which may be seen under their respective titles.

Judgments variable.

2. Others are discretionary and variable, according to the different circumstances of each case; thus for crimes of an infamous nature, such as petit larceny, perjury or forgery, at common law, gross cheats, conspiracy not requiring a villainous judgment, keeping a bawdy-house, bribing witnesses to stifle their evidence, and other offences of the like nature, it seems in great measure to be left to the prudence of the court to inflict such corporal punishment, and also such fine and binding to the good behaviour for a certain time, as shall seem most proper and adequate to the offence. 2. *Haw.* 445.

Judgment in the offender's absence.

3. The court may assess a fine, but cannot award any corporal punishment against a defendant, unless he be actually present in court. 2. *H.* 446.

Judgment by particular statutes.

4. By many statutes, peculiar punishments are appointed for several offences, as pillory, stocks, imprisonment and the like; and in all those cases no room is left for the justices' discretion, for they ought to give judgment, and to inflict the punishment in all the circumstances thereof, as such statutes do direct.

Jurors.

Justices of the peace in this province having no power or authority to hear or determine any offences or other matters whatever, wherein juries are required, and the book being intended

intended only for the service of justices of the peace, parish-officers, and those liable to parochial and publick duties, we will insert nothing under this head further than to shew,

I. Who are liable to serve as Jurors.

II. Their Fine in case of Non-attendance.

But before we proceed upon these two particulars we shall only observe, that trial by juries is the Englishman's birth-right, and is that happy method of trial which notwithstanding all revolutions of times, hath been continued from beyond all memory to the present day; and it may justly be said, that no part of his Majesty's dominions enjoy a larger share of that blessing than the inhabitants of this province, for the legislature have by the jury-laws wisely provided, 1st, That no man liable to serve as a juror shall have a greater share of that duty than another: 2d, That justice may be impartially distributed, all juries whatever are drawn by ballot.

I. Who are liable to serve as jurors.

LISTS or schedules of the names of the persons obliged to serve as jurors are annexed to the jury-laws, which names are transcribed from the tax-lists of the preceding year; and common or petit juries are such who have paid the sum of Twenty Shillings current money or upwards for their last preceding tax; and grand jurors such who have paid the sum of Five Pounds current money or upwards for their last preceding tax. Any person or persons who have been, are, or shall be, members of his Majesty's honourable council, judges or assistant judges in any of the courts of this province, or members of the assembly, and officers of any of the courts of justice, during the time they shall be members, and during their continuance in such offices, or any person or persons exempted by the laws and statutes of Great-Britain to serve as jurymen, are exempted from serving as jurymen in this province.

Who are liable to serve as jurors.

II. Their Fine in case of Non-attendance.

ANY person who shall be drawn, impannelled, summoned and returned, to serve as a juror at any court in this province, and shall not appear, or after appearance shall refuse to act,

Penalty in case of neglect or refusal.

Justices of the Peace.

act, or who shall absent himself without leave of the court, in such case the court may fine such person, if a petit or common jurymen, in any sum not exceeding Five Pounds proclamation-money; and if a grand jurymen, in any sum not exceeding Ten Pounds proclamation-money, unless a good and sufficient excuse is shewn and made to the satisfaction of the court, on or before the next adjournment or return day of the said court, by every such defaulter.

Justices of the Peace.

The office of
a justice of the
peace.

If this office be duly executed, the whole christian world hath not the like.

The original, power, authority, &c. of justices of the peace in general, is spoken of in the beginning of this treatise, therefore in this place will be only set forth:

I. Some general Directions relating to Justices of the Peace, not falling under any particular Title of this Book.

II. Of Fees to be taken by Justices of the Peace.

I. *Some general Directions relating to Justices of the Peace, not falling under any particular Title of this Book.*

Justice being
a party.

1. **R**EGULARLY justices of the peace ought not to execute their office in their own case, but cause the offender to be conveyed or carried before some other justice, or desire the aid of some other justice being present; yet if a justice acts in his own case, in some respects it seems justifiable, as when a justice shall be assaulted or (in doing his office especially) shall be abused to his face, and no other justice present with him, then it seems he may commit such offender until he shall find sureties for the peace or good behaviour. *Dalt. c. 173.*

To condemn
no man un-
heard.

2. In summary convictions, as in the trial of small and mean causes, the party ought to be heard, and for that purpose ought to be summoned in fact: and if the justice proceed against a person without summoning him, it would be a misdemeanour in him, for which an information would lie.

3. In all cases where justices may hear and determine on confession, or oath of witnesses, they ought to make a record in

in writing under their hands of all the matters and proofs for their own justification, as well as the satisfaction of the parties concerned.

II. Of Fees to be taken by Justices of the Peace.

SEVERAL acts of assembly have been passed for ascer-
taining publick officers fees, in which the fees to be taken
by justices of the peace are enumerated; but as all those acts
have been passed with suspending clauses we can take no notice
of them; therefore must be governed in this matter by an act of
assembly, passed and ratified May 7th, 1709. which enacts, That
if any justice of the peace in this province, shall demand or re-
quire any sum of money, fee or reward, for any matter, business
or thing, belonging to his office of justice of the peace, other than
such and so much fees as are limited and appointed by the said
act, he shall forfeit One shilling for every penny, he shall so
take and receive: In his oath of office are these words, " Nor
" take any thing for doing the business of your office of justice
" of peace, but the fees and allowances accustomed and fixed
" by acts of assembly."

Justices fees
what.

The justice of the peace his fees in proclamation-money.

	L.	s.	d.
For a warrant of the peace, - - -	0	3	1 1-2
For a recognizance, - - -	0	5	0
For administering an oath, - - -	0	1	3
For a common warrant, - - -	0	1	3
For a special warrant, - - -	0	1	3
For a mittimus, - - -	0	2	6
For a liberate, - - -	0	2	6
For a warrant of hue and cry, - - -	0	2	6
For taking a deposition, - - -	0	2	6
For attesting the return of an appraisement, - - -	0	2	6
For a probate to any writing, - - -	0	2	6

Justices of the peace are also intitled to the following fees
by several acts of assembly, viz.

By the negroe act passed 1740.

For certifying the evidence of apprehending
slaves to the Southward of Savannah-river,
by two justices, to each, } 0 4 0

By

Larceny.

By an act for preventing stealing of horses and neat cattle,
passed 1743.

For tolling every horse,	-	-	-	0	2	0
For advertising every stray.	-	-	-	0	4	0

Larceny.

- I. Of grand Larceny.
- II. Of petit Larceny.
- III. Larceny from the Person.
- IV. Receiving stolen Goods.

I. Of grand Larceny.

Grand Lar-
ceny what.

GRAND Larceny is a felonious and fraudulent taking and carrying away, by any person, of the mere personal goods of another, above the value of Twelve-pence Sterling. 1. H. 89.

Felony is always accompanied with an evil intention, and therefore shall not be imputed to a mere mistake, or misanimadversion, for it is the mind that makes the taking of another's goods to be felony, or a bare trespass only: But because the variety of circumstances is so great, and the complications thereof so mingled, that it is impossible to prescribe all the circumstances evidencing a felonious intent, or the contrary, the same must be left to the due and attentive consideration of the judge and jury; only in general it may be observed, that the ordinary discovery of a felonious intent is, if the party doth it secretly, or being charged with the goods denies it. 1. H. H. 509.

If two persons or more together, steal goods above the value of Twelve-pence, every one of them is guilty of grand larceny; for each person is as much an offender as if he had been alone. 1 H. 95.

The learned editor of Hale's history of the Pleas of the Crown, observes, that in former times, though the punishment of theft was capital, yet the criminal was permitted to redeem his life by a pecuniary ransom; but the liberty of such redemption being by statute entirely taken away, the severity of the punishment of theft is much greater now than it was then; for Twelve-pence

pence would then purchase as much as Forty Shillings will now; and yet a theft above Twelve-pence is still liable to the same punishment: upon which Sir H. Spelman justly observes, that while all things else have risen in their value and grown dearer, the life of man is become much cheaper; and from hence takes occasion to wish, that the ancient tenderness of life was again restored.

Of petit Larceny.

PETIT larceny agrees with grand larceny in every circumstance, except only the value of the goods; so that wherever an offence would amount to grand larceny, if the thing stolen were above the value of Twelve-pence, it is petit larceny if it be but of that value or under. 1 Haw. 95.

Petit larceny
what.

In petit larceny there can be no accessaries neither before nor after. 1 H. H. 530.

Larceny from the Person.

IF the goods taken are from a man's person, the offence receives a farther degree of guilt; and if it is attended with putting him in fear, it is called Robbery: for which see that title.

Larceny from
the person
what.

Receiving stolen Goods.

IF any person shall buy or receive any stolen goods, knowing them to be stolen, or shall receive, harbour or conceal, any felons or thieves, knowing them to be so, he shall be deemed accessory to the felony, and being convicted on the testimony of one witness, shall suffer death as a felon-convict. 5 A. c. 31. And notwithstanding the accessory cannot be regularly tried, till the principal be convicted, yet nevertheless the buyer and receiver of stolen goods may be prosecuted as for a misdemeanour, and punished by fine and imprisonment, or other such corporal punishment as the court shall think fit.

Punishment
on the re-
ceivers of
stolen goods.

Lord's-Day.

ALL persons not having reasonable excuse, shall resort every Lord's-Day to their parish church, or some other parish church, or some meeting or assembly of religious worship.

A. A. Anno
1712.

All persons
obliged to
observe the
Lord's-Day.

ship tolerated and allowed by the laws of this province, and shall there abide orderly and soberly during the time of prayer and preaching, on pain of forfeiture for every neglect the sum of Five Shillings current money, which was proclamation at the time the above act was passed.

No person to
exercise any
worldly la-
bour thereon.

2. No tradesman, artificer, workman, labourer, or other person whatever, shall do or exercise any worldly labour or business whatever on the Lord's-Day (works of necessity or charity excepted) under the pain and forfeiture of Five Shillings for every such offence.

Penalty on
persons sell-
ing goods on
the Lord's-
Day.

3. No person whatever shall publicly cry, shew forth or expose to sale, any wares, merchandizes, fruits, herbs, goods or chattels whatever on the Lord's day, upon pain of forfeiting the goods so cried or shewed forth.

No person to
travel on the
Lord's-Day.

4. No drover, waggoner, butcher, higgler, or any other person whatsoever, or their servants, shall travel on the Lord's-Day by land or water, excepting to some place of religious worship, or to visit or relieve any such person, or upon some extraordinary occasion, for which he she or they shall be allowed to travel under the hand of some justice of the peace.

No sports or
pastimes to be
allowed on
the Lord's-
Day.

5. No publick sports or pastimes, as bear-baiting, bull-baiting, foot-ball playing, horse racing, interludes, or common plays or other games, shall be used on the Lord's Day by any person whatever, under the pain of forfeiting Five Shillings for every such offence.

No publick
house to en-
tertain any
guests on the
Lord's-Day,
except stran-
gers and
lodgers.

6. No vintner, inn-holder, or other person keeping any house of entertainment, shall entertain or suffer any person, excepting strangers and lodgers in such houses, to abide or remain in their houses or out-houses, yards or orchards, or fields, drinking or idly spending their time on the Lord's-Day, upon pain of Five Shillings to be paid by every person respectively so offending; and the like sum of Five Shillings to be paid by the keeper of such house for every person entertained by them.

Church-war-
dens of
Charlestown
to walk thro'
the town in
the time of
divine service
and appre-
hend offen-
ders.

7. The church-wardens of Charlestown, and constables, or any one or more of them, shall once in the forenoon, and once in the afternoon, walk through the town to observe and apprehend all offenders; and for that purpose are empowered to enter into any publick house, or suspected houses, to search for any such offenders, and if denied entrance are empowered to break open the doors of any such house, and all persons are to be aid-
ing

ing and assisting to the constable or other person in the execution hereof under the penalty of Ten Shillings.

8. If any master, mistress, or overseer, shall command, cause or encourage any servant, slave or slaves, to work on the Lord's Day, he, she, or they, shall forfeit for every such offence the sum of Five Shillings.

Penalty for making a servant work on the Lord's-Day.

9. Every justice of the peace is authorised to convene before him any person offending in any of the foregoing particulars, and upon his own view, or confession of the party, or proof of any one or more witnesses upon oath, and shall give a warrant under his hand and seal to the constables or church-wardens of the parish where such offence shall be committed, to seze the goods cried and shewed forth as before mentioned, and to levy the other fines and penalties by way of distress and sale of the goods of every such offender; and in default of such distress, or in case of insufficiency or inability of the offender to pay the penalty, that then the party offending be set publickly in the stocks for the space of two hours.

Justices of the peace im- powered to convene any person before him offending against this act.

The forfeitures and penalties incurred by this act shall be converted to the use of the poor of the parish where the offence is committed; but the justice has power to reward any person that shall inform of any of the said offences, so as the said reward do not exceed the third part of such forfeitures or penalties.

Forfeitures and penalties incurred by this act how to be applied.

10. No person shall be impeached, prosecuted, or molested, for any of the offences before mentioned, unless he or they be prosecuted for the same within ten days after the offence committed.

Persons to be prosecuted in ten days after offence.

A Warrant to levy the penalty on persons travelling on the Lord's-Day, which will answer *mutatis mutandis*, for the other penalties under this title.

South-Carolina, }
County. } By I. P. one of his Majesty's Justices of the Peace of the County aforesaid.

To any lawful Constable of the said County.

WHEREAS it hath been duly proved before me, that A. B. of ---- being a common carrier (or as the case is) did the ---- day of ---- last past, being the Lord's-Day, travel with his horses into, and through the parish of ----, contrary to the act of assembly in that case made and provided, by reason whereof he

Warrant to be issued against those that travel on the Lord's-Day.

Market.

hath forfeited the sum of ---- to the use of the poor of the said parish: These are therefore, &c. to command you forthwith to levy the sum of ---- on the goods and chattels of the said A. B. by distress and sale thereof rendering to him the overplus, if any there be, and that you see it employed to the use of the poor of your said parish as by law it ought. Given, &c.

A Licence to travel on Horseback on the Lord's-Day.

South-Carolina, } ff. By I. P. one of his Majesty's Justices of the
County, } Peace of the County aforesaid.

FORASMUCH as I. S. gentleman, the bearer hereof, came before me, and hath this day given me such reasonable satisfaction as is required by the act of assembly in that behalf made, of his urgent occasion to travel on horseback upon the next Lord's-Day, from his house in ----, in the parish of ----, in the county aforesaid, to ---- in the county of ----. These are therefore to certify, that I have, according to the directions of the act of assembly, given free licence and liberty to the said I. S. to undertake and perform his said journey on the next Lord's-Day as aforesaid; hereby requiring you the constables and others his Majesty's officers of the peace to permit and suffer the said I. S. quietly and peaceably to travel on that day through your several and respective precincts at his discretion, without any molestation or disturbance whatever. Given, &c.

Market.

A. A. 12 G. 2.
Anno 1739.

A publick market to be held every day of the week (Sundays excepted) at the place appointed.

ENACTS, that a publick market shall be held and kept in Charlestown on every day of the week (Sundays excepted) at the place established and laid out for a market in the original model of Charlestown; and the said place shall be held, deemed and taken to be the publick market for selling and exposing to sale, beef, mutton, veal, lamb, pork, and other butchery wares; and for the resort of all or any of the inhabitants of this province, for buying any of the provisions sold or exposed to sale therein: and if any person or persons, usually following the trade or occupation of a butcher, shall sell or expose to sale any butcher's meat, in any other place in Charlestown, or within one mile thereof, than in the said market, every such person so offending, and being thereof convicted before

fore the commissioners after mentioned, or three of them, on the oath or solemn affirmation of one or more persons, shall forfeit the meat so exposed to sale, and the sum of Five Pounds current money for every such offence, a moiety to the use of the poor of Charlestown, the other to the informer, to be recovered by warrant under the hands and seals of any three of the said commissioners, and levied by distress and sale of the offender's goods.

And all and every butcher, poulterer, country planter, victualler, lader, kidder, or other person whatsoever, may then sell, utter, and put to open shew, or sale, his or their beef, mutton, veal, lamb, pork, or other butchery wares, poultry, fish, and other provisions whatsoever, upon every day of the week, except Sundays, from the rising of the sun all the year long. And if any person whatsoever shall sell, or offer to sale, any manner of butchery or poultry wares, or other provisions in the said market, or other place in Charlestown, before the ringing of the market bell, at sun rising in the morning, every such person so offending, and being thereof convicted before any three of the said commissioners, on the oath or solemn affirmation of any one or more person or persons, shall forfeit the meat so exposed to sale, and pay the sum of Two Pounds current money for every such offence, a moiety thereof to the use of the informer, the other to the use of the poor of Charlestown, to be recovered as aforesaid. And the clerk of the market for the time being, is directed and required to ring, or cause the said market bell to be rung at sun-rising, and also at nine o'clock in the morning, on every market-day throughout the year, on pain of forfeiting the sum of Five Pounds for every neglect, to be recovered and applied as before directed.

2. No retailer, trader, or other person whatsoever, who buy any meat or other provisions of any sort to sell again, shall enter into the said market or other place in Charlestown, and buy before the ringing of the bell at the hour of nine of the clock in the forenoon, from any of the market people or other persons there, any meat, fish, poultry, herbage, fruit, or other provisions of any sort whatsoever (except live cattle, calves, sheep and lambs) to sell the same again either in the said market or elsewhere in Charlestown, under the pain of forfeiting for every such offence the meat or other provisions so bought, and the sum of Five Pounds current money, a moiety thereof

Retailers not to buy provisions, &c. before the bell is rung at nine o'clock in the morning.

to

to the informer, and the other to the use of the poor of Charlestown, to be recovered as before directed.

No provisions
to be bought
before nine
o'clock in the
morning, &c.

3. No person whatsoever shall buy, or cause to be bought, before the ringing of the bell at nine o'clock in the morning, any victuals or provisions of any sort, within Charlestown or the limits thereof, coming to the said market, or intended to be sold in Charlestown, or make any bargain, contract, or promise, for the having or buying the same, or any part thereof so coming, with an intent to sell the same again, before the same shall be actually brought into the said market ready to be there sold; nor shall any person or persons, by any means, forestall, regrate, engross, obtain, or get into their hands and possession in the said market, any victuals, provisions or other things whatsoever, that shall thither be brought to be sold, with intent to sell the same again in the said market, or within the limits thereof, before the ringing of the bell at nine o'clock in the morning, upon pain that every such forestaller, regrater, engrosser, and other person offending in any of the matters aforesaid, shall, for every such offence, being thereof convicted by the oath or affirmation of one or more witness or witnesses, before any three of the commissioners, forfeit all such provision and victuals so bought, bargained for, forestalled, regrated or ingrossed, and also the sum of Five Pounds current money, the one moiety to the informer, and the other to the poor of Charlestown, to be recovered as before directed. But any planter, or other person, may carry butter, cheese, poultry, milk, fish, fruit or herbage, to any house or houses in Charlestown, to sell and dispose of the same (except such persons who buy to sell the same again undressed) any thing in this act to the contrary notwithstanding.

All weights
and measures
to be sealed
and marked
by the clerk
of the market.

4. All weights and measures that shall be used in Charlestown market, shall be made agreeable to the standard of exchequer, and shall be marked and sealed by the clerk of the said market, who shall be allowed a fee for the doing thereof, as is after limited and appointed: And no person whatsoever shall presume to buy or sell in Charlestown, any commodities commonly bought or sold by Averdupoise weight, by any weight or measure under the said standard, or with weights not sealed or marked, or not justly made, according to the said standard, or by and with unjust and false scales and beams, on the pain of forfeiting the sum of Two Pounds current money for the first offence, and Five Pounds like money for every other offence of the like kind,
the

the one half to the use of the poor of Charlestown, the other half to him or them that will sue for the same, to be recovered as before directed. And the clerk of the market is authorised and required to try all weights and measures, beams and scales, used in the said town and markets at least once in every year, and the publick scales always in the month of October, and seize and take away to his own proper use, all weights and measures which shall be found to be light, or not agreeable to the said standard, or shall be made use of in the said town or market before they are sealed by the said clerk, and all scales and beams which shall appear to be unjust or false upon trial or examination thereof.

5. The clerk of the market shall be allowed and paid by the owner, or person selling in the said market, or elsewhere in Charlestown, the rates following, that is to say,

The clerk of
the market's
fees.

	L.	s.	d.
For every ox, steer and cow, - - -	0	1	3
For sealing every weight, - - -	0	0	6
For sealing every measure, - - -	0	0	6
For trying every weight, measure, beam or scales	0	0	6
For weighing every quarter of beef, (if required)	0	0	6

And in case any person or persons who shall sell any of the said provisions in the said market, or shall use any weights and measures in the said town for buying or selling, shall refuse or neglect to pay the said rates, fees and proportions, the clerk of the market shall and may recover the same by a warrant from the commissioners, or any three of them.

6. If any persons shall sell, or expose to sale in the said town or market, any butter in pounds, parcels or quantities, being under weight, any white person or persons may seize the same, and shall forthwith carry it, together with the person in whose possession it shall be found, before any two of the said commissioners, who shall proceed to examine such butter; and if such quantities or parcels of butter shall be found light or under weight, it shall be condemned by such two commissioners as forfeited, the one half to the poor of Charlestown, the other moiety to the person informing and seizing the same.

Butter offered
to be sold un-
der weight
may be seized.

7. Every person who shall sell, or offer to sale, by weight, any meat in the said market, and have no weights or scales of their own hanging in the said market, shall have their meat weighed in the scales belonging to the clerk of the market, and

Persons not
having scales
of their own
to use the
clerk of the
market's.

in

in no other scales, under the penalty of forfeiting one pound to the use of the clerk, to be recovered as before directed.

The clerk of the market to give good attendance.

8. The clerk of the market shall give his constant attendance, unless he can give a reasonable excuse to be approved by the commissioners, at the said market, from sun-rise to the hour of nine o' clock in the morning, every day in the week, (Sundays excepted) and shall weigh all butcher's meat which shall be brought to the said market, if required; and shall prosecute every person and persons who shall offend against this act, of any thing therein contained, and whereof he shall receive information, or any ways come at the knowledge of, under the penalty of Ten Pounds current money for every refusal, neglect or omission; one moiety thereof to the poor of Charlestown, the other to the informer, to be recovered as before directed.

The commissioners of the work-house to be commissioners for putting this act in execution.

9. The commissioners of the work-house of Charlestown for the time being, are declared to be the commissioners for putting, or causing to be put in execution this act; and they, or a majority of them, are invested with full power and authority to see the same duly kept and observed; and they, or a majority of them, are impowered to let to hire, the several stalls, or part of stalls, built or to be built in the said market, at such rates, terms and prices, as they shall think reasonable; and the rents arising therefrom, in the first place, to apply towards such of the butchers who have paid or contributed any sum to the building the said market, and the remainder of the said rents, after deducting the necessary repairs, and keeping clean the same, to be applied for the use of the poor of Charlestown.

No unwholesome meat to be sold in the market.

10. In case any person shall expose, or offer to sale in the market, or other place in Charlestown, any poor carrion, blown, puffed up, or unwholesome meats, on complaint thereof made, to any three of the commissioners, and if such complaint shall appear to them to be true, they are impowered to cause the same to be taken away and burnt, or otherwise destroyed.

Penalty on those who shall oppose the commissioners.

11. If any person or persons shall oppose, obstruct or insult the commissioners, or any or either of them in the execution of their office, or shall make use of any blasphemous, profane or opprobrious language, to create any riot, disturbance or disorder in the market, such person or persons so offending, shall forfeit the sum of Five Pounds current money; one moiety to go to the poor of Charlestown, the other to the informer, to be recovered upon

upon oath before any one of his Majesty's justices of the peace of this province ; and in default of payment of the said fine, such person or persons so offending shall be put in the stocks for such time as the justice, before whom the matter shall be heard, shall direct and appoint, not exceeding the space of six hours, and the clerk of the market and constables of Charlestown, are required to be aiding and assisting in the execution hereof.

12. If any negroe or other slave, belonging to any person living or residing within Charlestown, or who usually retail provisions in the said town, shall sell or expose to sale any rice, corn, poultry, or other provisions (fresh fish excepted) without a ticket from his, her, or their respective master, mistress, overseer, or employer, particularly enumerating the goods so exposed to sale, it shall be lawful for any white person to seize such goods, and to apprehend and bring such slave or slaves before the commissioners, or any three of them, who are required and impowered to condemn all such provisions as forfeited to such person seizing the same, which shall not be specified in the ticket aforesaid: and if any slave or slaves in Charlestown, shall be found buying up any of the provisions aforesaid in Charlestown, or within the limits thereof, before the ringing of the market-bell at the hour of nine of the clock in the forenoon, with intent to sell the same again undressed, it shall be lawful for any white person to seize and apprehend such slave and slaves, together with such provisions, and to bring the same before the commissioners, who are impowered to condemn the same as forfeited as aforesaid, and to order such slave such corporal punishment as they shall think fit, not extending it to loss of life or limbs.

Slaves not to
sell provision
without a
ticket.

13. All and every person or persons whatsoever, who shall kill or sell any ox, steer, cow, calf, sheep or hog in Charlestown, or within two miles thereof, on a Sunday between the sun-rising and sun-setting, shall for every such offence forfeit and pay the sum of Five Pounds, one half to the informer, and the other half to the poor of Charlestown, to be recovered in the same manner as before directed, for the recovery of other fines.

Butchers not
to kill meat
on Sundays.

14. In case any action or suit shall be sued against the commissioners, clerk of the market, or other persons whatsoever, for any matter, cause or thing, by them or any of them done, in pursuance of the directions of this act, it shall and may be lawful for them to plead the general issue, and give this act and the special matter in evidence.

Persons sued
may plead the
general issue.

Militia.

Intituled *An Act for keeping the Streets in Charlestown clean*, &c. enacts, in the 31st §. That the commissioners for the publick market in Charlestown, or a majority of them, shall have full power, and they are thereby fully impowered to erect shades, on the piece of land belonging to the publick, being part of a low-water lot on the Bay of Charlestown, fronting Tradd-street, for a publick market; or to purchase a piece of the low-water lots next adjoining the same on either side, or to sell and dispose of the said land belonging to the publick, and purchase any other piece of land on the said Bay, lying between Mr. Mathews's and Mr. Elliott's wharfs, for the use of a publick market, and to erect shades thereon for a market for the use of the persons living in the country, who do not follow the trade or occupation of a butcher, and such low-water lot or land, when purchased by the commissioners, shall be and enure to his Majesty, his heirs and successors for ever, for the use and purpose aforesaid, under the regulation and subject to the direction of the commissioners of the market in Charlestown; and the monies arising from the hire of stalls in the said market shall be paid into the hands of the publick-treasurer, till the expence of purchasing the said land and erecting the said shades shall be reimbursed; and afterwards the rent of the said stalls shall be applied in the same manner as the rents of the stalls in the other market.

Militia.

THE several acts of assembly of this province, made and passed for forming and regulating the militia throughout the province being temporary, their obligation seemeth to be yet only in its probationary state; and though the whole laws relating to the militia may probably receive some alterations in a future session of assembly, nevertheless, it is judged requisite for the present to insert the substance of such paragraphs of the present laws as contain the duty of those concerned in the execution of them.

A. A. 21. G.

Repeals all former acts for regulating the militia, and enacts, That his Excellency the Governour, or the commander in chief for the time being, shall have full power to call together all male persons in this province from sixteen to sixty years of age,

to

to form them into troops, companies and regiments, and from time to time constitute, appoint, and give commissions to such persons as he shall think fit to be colonels, majors, adjutants, captains, and other commission officers.

2. One or more regiment or regiments shall be formed in every county, and one or more company or companies in every parish, to consist of such number of men as the governour, or commander in chief for the time shall in his discretion think fit.

Regiments to be formed in every county, and companies in every parish.

3. The several field-officers in each regiment who shall be in commission, or a majority of them, have power to settle and ascertain the districts and divisions of the companies in each parish under their command; provided such divisions be agreeable to the directions and regulations prescribed by this act.

Field-officers in each regiment to settle the districts of the companies.

4. The colonel, or in his absence the next field-officer of every regiment formed, or to be formed on any days and times when any three or more of the companies of the militia shall be assembled (to be trained, mustered, or exercised) within six miles of one another, may cause such companies to assemble together at some convenient place within the district of such regiment, there to train and exercise such companies in battalions, in such manner and form as he shall think fit; excepting all companies upon any islands along the sea-coast.

When three or more companies are within six miles of each other, the colonel may assemble them together to be exercised in battalion.

5. Every captain, or other inferiour commissioned officer, who shall refuse or neglect to conduct or lead his company to the place of rendezvous of any general muster, or to the exercising of the companies in battalion, shall for every such offence forfeit and pay the sum of Twenty-five Pounds current money, which offences are to be heard, tried, and determined in the way and manner hereafter directed.

Penalty on officers who neglect their duty.

6. Every captain, or other commanding officer of a company, may assemble, muster, train and exercise his company six times in one year for ordinary musters, at any time or times throughout the year, giving notice of such muster by beat of drum, or in such other expeditious manner as he shall think fit: but no person is obliged at any general muster to go out of the county where he resides, nor at ordinary musters to go out of the parish where he dwells, nor to remain at the place where such general or ordinary musters shall be appointed above one day, except in time of actual rebellion, insurrection or invasion.

Companies to be mustered not exceeding six times in a year.

All male inhabitants from 16 to 60 to be enlisted,

7. The captains shall severally and respectively enter, enlist, and enroll all the names of the male inhabitants from the age of sixteen to sixty years, within their several parishes and divisions, and shall cause the persons so enlisted to be duly summoned to appear at the times and places appointed for ordinary musters; and the publishing the muster-days as before-mentioned shall be deemed a sufficient summons to oblige the persons liable to appear at such musters; and the persons whose names shall be so entered, enlisted and enrolled, shall be deemed and held to be enlisted in, and to belong to the company of that parish or division in which they are, or shall be so enlisted and enrolled.

How each person shall be armed.

8. Every person liable to appear and bear arms at any muster, exercise or training, shall constantly keep in his house, or at his usual place of residence, and bring with him to such muster, &c. one gun or musket fit for service, a cover for his lock, one cartridge-box with at least twelve cartridges filled with good gun-powder and ball, a horn or flask filled with at least a quarter of a pound of gun-powder, and shot-pouch with bullets proportionable to the gun-powder, one girdle or belt, one ball of wax sticking to the end of his cartridge-box to defend his arms in rain, one worm and picker, four spare flints, a bayonet, sword or hatchet; of the fitness and sufficiency of which arms every commanding officer of the company to which such person belongs is to judge.

Penalty on such as shall not appear completely armed.

9. In case any person liable to appear and bear arms at musters, shall neglect or refuse to appear compleatly armed, at any general muster of the regiment to which he belongs, he shall pay a fine not exceeding Five Pounds current money; and for not appearing compleatly armed at ordinary musters, a fine not exceeding Three Pounds like money.

The officers may visit peoples houses to view their arms, &c.

10. The commission officers of any of the companies may, six times in the year, and not oftener, take to their assistance, if they think fit, the serjeants of such companies, and at any convenient time of the day repair to the place or places of residence of any person or persons, as well those who are obliged to appear on alarms, as those who are enlisted in any such companies, and to demand a sight of the arms, ammunition, furniture and accoutrements aforesaid; and in case any person shall refuse or neglect to produce any such arms, ammunition, and accoutrements, or to suffer the same to be viewed and inspected,

spected; or if when produced the said officer shall find the same defective, he may fine the person or persons offending herein in any sum not exceeding Three Pounds current money, to be recovered in the same way and manner as in the case of defaulters for not appearing at musters.

11. General musters, as also the assembling or mustering of the companies on any particular and special occasion, shall be esteemed and accounted as a muster-day, and one of the six times on which the said companies are obliged to muster in one year: but no company or companies are to assemble on such special occasion, without the order, command or direction of the governour, or commander in chief for the time being, unless it be for the suppressing of insurrections, pirates, sea-rovers, or fugitive slaves.

What times
shall be
deemed mus-
ter-days.

12. The governour or commander in chief for the time being is impowered, from amongst the inhabitants of the province who have sufficient substance to undergo the charge, and will voluntarily enter and enlist, to form a troop or troops of horse, not exceeding in the whole the number of two hundred men, and to appoint and commission proper officers to command such troop or troops, and to muster, train, and exercise them, not less than four times in the year, at such place or places as he shall appoint.

A troop or
troops of
horse to be
formed, &c.

13. Every person who shall enlist in such troop or troops, shall provide himself with a good and able horse (his own property) fourteen hands in height at least, and with such cloaths, arms, ammunition and furniture, as the colonel of such troop for the time being shall direct, and every person so enlisted shall be excused and exempted from all service whatsoever in any other troop, regiment or company (the patrol-duty excepted): but no person shall be enlisted in any such troop, unless he be first approved by the colonel of the same, and when enlisted must obtain a certificate from the colonel, specifying the time of his enlisting in the troop, which certificate he must produce to the captain or commanding officer of the company of the parish or division where he resides, otherwise he is liable and subject to all the penalties and forfeitures inflicted by this act for not keeping arms, or not appearing at musters, trainings and exercises; and, when he is enlisted in any such troop, he cannot be discharged from the same, without giving three months notice in writing to the colonel or other commanding officer

The height
of their horses
and how to
be armed and
cloathed.

officer of the troop of his intent to be discharged, and producing a certificate at the end of the said three months to such commanding officer, that he is enlisted in the foot company of the parish or division where he resides.

To attend the Governour whenever their service may be required,

14. In the time of any actual rebellion, insurrection or invasion, the said troop or troops shall attend the Governour or Commander in chief for the time being, or go to any place within the province, where he shall judge their service may be required; and shall upon all other occasions attend the Governour or Commander in chief, upon notice given in the publick newspapers, or by being personally summoned by any person appointed for that purpose by the colonel or commanding officer, under the penalty of a sum not exceeding Five Pounds current money.

Persons exempted from muster.

15. All persons who are, or have been members of his Majesty's Council, and their officers for the time being, the members of the assembly for the time being, and their officers, the chief justice, and justices of the court of common-pleas, the attornies of the said court, the clerk of the crown and pleas, the provost-marshal, the master and register of the court of chancery for the time being, the judge of vice-admiralty, the officers of his Majesty's customs, the surveyor-general of his Majesty's lands in this province, the clergy, the publick treasurer, powder-receiver, comptroller, waiters, and commissary for the time being, his Majesty's justices of the peace who shall actually qualify and act as such, and no other; all non-commissioned colonels, lieutenant-colonels, majors and captains in the several regiments, who have borne their several commissions for the space of Ten years, or who shall have borne such commission, or any, or all of them successively, for the space of Ten years in the whole; the pilots, and one person to attend each boat, and one white man to attend each ferry, and all white servants residing and employed without the limits of the parishes of St. Philip and St. Michael, Charlestown, are excused and exempted from appearing at general and ordinary musters; But all the persons aforesaid (the members of his Majesty's honourable council, and and of the assembly, and their officers, and the pilots and ferry-men only excepted) shall in the time of rebellion, insurrection, or actual invasion, attend under the proper colours of the company, in the district in which such person shall live or reside, compleatly armed and furnished as before directed, on pain of forfeiting One Hundred Pounds current money.

16. Every

16. Every master or other person, who hath the power over, government or command of any white apprentice or man servant, who shall be employed within the limits of St. Philip and St. Michael, Charlestown; shall at his or their own proper costs and charges, furnish and provide every such apprentice or manservant, during his servitude, with the arms and furniture directed by this act; and every master or other person, as aforesaid, shall constantly keep such arms and furniture as aforesaid, for every such apprentice or servant, and shall send him or them so compleatly armed and furnished as aforesaid, to all musters, trainings and exercises directed by this act; and in case such apprentice or servant shall not appear, or his arms and furniture shall be found deficient, the master or other person as aforesaid, having the government of such apprentice or servant, shall, on default made in any of the premises, be subject to the same forfeitures and penalties as are inflicted on other persons made liable by this act to appear and bear arms at exercises, musters and trainings: Provided always, that if any such servant as aforesaid, who shall be duly furnished and provided as is before directed, and shall be sent to muster by the master or other person under whose government such servant shall be, shall of his own accord, and contrary to the will, and without the consent of the master, or such other person as aforesaid, neglect to appear at any muster, training or exercise, appointed by this act, the master or other person under whose government such servant may be, shall be liable to the penalties by this act inflicted for the default of such servant; and every such servant so offending, shall be obliged to serve his master two weeks for every penalty so paid by his said master or other person. And if any person shall embezzle, sell, or make away with the arms so to be provided for him; he shall be liable to make his master, or other person under whose government he may be, full satisfaction.

Masters to provide their servants and apprentices with arms, &c.

17. Every servant within the limits of St. Philip and St. Michael, Charlestown, shall be allowed six months after being discharged from his servitude, to provide himself with the arms and furniture by this act directed and required, and during that time shall be exempted from the penalties inflicted by this act.

Six months given to freed servants to provide themselves with arms, &c.

18. No civil officer whatsoever shall, on any pretence, execute any process (unless for treason, felony, or breach of the peace) on any person whatsoever, at any muster, or other time, when such person shall be obliged to bear arms in pursuance of the directions.

No process to be served on persons going to or returning from musters.

directions of this act, nor in going to, or returning from any muster or place of rendezvous, or within twenty-four hours after such person shall be discharged from appearing in the regiment, company or troop, to which he shall belong, under the penalty of Twenty Pounds, current money, and the service of any such process shall be void to all intents and purposes whatsoever; and all arms and furniture, which by this act are required to be provided, shall not be liable to be seized, distrained, or taken in execution, for any cause, matter or thing whatsoever. And in case any person shall seize, levy or distrain upon any such arms or furniture, every such person shall forfeit the sum of Twenty Pounds, current money, to be recovered as is after directed.

Penalty & punishment on such as disobey their officers, or will not fire.

19. Any person obliged to bear arms, whilst the regiment, troop or company to which he shall belong, shall be under arms or in array, shall neglect or refuse to fire his gun, not exceeding six times each muster-day, or shall wilfully neglect or refuse to do his duty or to obey the other lawful commands of his officer, the majority of the officers of the troop or company to which such person belongs (if the offence shall be committed in a single troop or company) or any two field officers of the militia regiment (if committed in a regiment) have full power and authority to inflict on the person so offending, any pecuniary mulct, not exceeding Five Pounds, current money: And in case any person shall be disobedient, or raise any mutiny or sedition in such regiment, troop or company, under arms, or in array, such person shall be liable to a fine not exceeding Ten Pounds; and the said officers, respectively, over and besides such pecuniary mulct, may confine or imprison such offender, until such time as the regiment, troop or company, to which the offender shall belong, shall be discharged from bearing arms, on the occasion for which they shall be assembled; and in case such offender shall be a servant, and shall not forthwith pay such fine imposed as last above mentioned, the said officers, respectively, may inflict corporal punishment on such servant, by whipping, not exceeding twenty lashes.

Persons removing from one parish to another.

20. If any person remove from one county, parish, division or place, to any other county, parish, division or place, the captain or commanding officer of the company to which such person last belonged, may levy the penalties inflicted by this act for non-appearance at musters, or for not having sufficient arms

arms and furniture, in the same manner as if such person had not removed from the county, parish, division, or place to which he belonged, until such time as he shall produce a certificate from the colonel or commanding officer of the troop, or from the captain or commanding officer of the company of the parish or division into which such person shall remove, that he is entered, enlisted and enrolled in the company of such commanding officer.

21. If the Governour, or commander in chief for the time being, receive advice from any person or persons in authority under his Majesty, or other credible person or persons in foreign parts, or if he shall receive any information upon oath from any credible person or persons within the province, that any foreign enemy or armed force intend suddenly to invade the province; or if any dangerous insurrection or rebellion be actually raised within this province, which cannot be suppressed by one single company, the Governour or commander in chief may, by and with the advice and consent of the majority of his Majesty's Council for the time being in the province, raise and assemble such and so many of the regiments, troops, and companies by this act directed to be formed, as he, by and with the advice and consent aforesaid, shall think sufficient and able to suppress and repel such invasion, rebellion or insurrection as may happen. And for the more effectual execution thereof, he may, by and with the advice and consent aforesaid, make and publish, or cause to be made and published, an alarm throughout the whole province, by firing six guns, two at a time, at three minutes distance, or by sending orders and expresses to the field-officers or other officers of the militia, to raise their several and respective regiments, troops or companies, or such part of them as shall be ordered and directed to march and rendezvous at such proper times and places within the province, as the Governour or commander in chief for the time being shall think fit. And the said alarm shall be carried on throughout the whole province, by all the commissioned officers in the militia, by firing three small arms at convenient intervals from place to place, and by speedy raising of their several companies, and taking all other proper and effectual measures to give notice of the motion of the enemy, and forwarding with the utmost expedition, all necessary information to the governour or commander in chief, and by putting in execution all such orders as they shall receive from their superiour officers.

Alarm to be published in times of invasion & insurrection, &c.

Alarms shall be carried on by every persons hearing the same.

Militia.

22. An alarm shall be made by any commissioned militia officer, by firing three small arms on sight of any enemy, or on information of any enemy appearing, or mischief done by an enemy, from any white man of credit, who hath seen the same, of the credit of which informer the said officer shall be a judge: And every alarm shall be carried on by all persons hearing or having knowledge of the same, by firing three small arms distinctly as usual: And the said officer who fired the alarm, shall raise the company of which he is an officer by beat of drum, or by ordering men to warn their next neighbours, till the company can be got together: And the commanding officer of the said company shall, with all convenient speed, dispatch two exprests, one to the governour or commander in chief, and the other to the next field-officer of the regiment to which the said company belongs, with an account of the cause of the alarm so made; upon which notice the said field officer has power to raise any number of men of the regiment he belongs to, to march to the assistance of any of the inhabitants of the province who are in danger.

Penalty on persons who disobey in times of alarm.

23. If any person liable to bear arms shall in time of such alarm neglect or refuse to use his utmost endeavours to convey and communicate the said alarm, or notice of the enemy's approach, every such person shall forfeit and pay the sum of Fifty Pounds current money: And in case any such person, after he hath notice of an alarm, does not forthwith repair compleatly armed and accoutred as aforesaid, with all convenient speed to the place where the regiment, troop or company to which he shall belong, shall be appointed to rendezvous, every such person shall forfeit One Hundred Pounds current money; and in case the company or troop to which such person shall belong shall actually engage and fight with the enemy before such person shall appear in the said regiment, troop or company, in every such case the person not appearing as aforesaid shall forfeit Two Hundred Pounds current money.

Pirates, sea-rovers, Indians and fugitive slaves how to be suppressed.

24. Every commissioned officer in the militia has power, when occasion shall require, to assemble, arm, and raise any number of men belonging to their respective companies, and if need be to give notice and call to their aid the officers and men of any adjacent company, to disperse, suppress, kill, destroy, apprehend, take or subdue any pirate, sea-rover, Indian, or other enemy, who shall in a hostile manner hurt, or attempt to

to hurt, any of his Majesty's subjects in their persons or possessions; or any company of slaves who shall be met together, or who shall be lurking in any suspected places, where they may do mischief, or who shall have absented themselves from the service of their owners: And in case any person liable to bear arms shall on such occasion neglect or refuse to appear upon notice given by any commissioned officer of the troop or company to which such person belongs, or appearing shall not attend and obey the said officer, he shall for every such neglect or refusal forfeit the sum of Ten Pounds current money.

25. In time of invasion or insurrection, when it shall be found necessary to march the several regiments, troops or companies, or any of them, out of their proper counties, parishes or divisions, one fourth part at least of every company in this province shall stay and remain in the respective parishes and divisions to which they belong, and shall be formed into patrols; under the command of such officers as the commissioned officers of the companies shall direct and appoint, until the Governour or commander in chief shall commission and appoint an officer for each of such patrols, under whose command respectively they shall continue untill the rest of the company shall return to their habitations, and shall be discharged from bearing arms: And the patrol so formed shall be obliged to be on constant duty, and to ride and patrol and guard the plantations, and keep the slaves within their several parishes and divisions in good order; and shall place proper guards, watches and centinels, at proper and convenient places to give notice of danger, or for the more speedy conveying advices and intelligence to the Governour or commander in chief, or any army raised and assembled by his command: And in case any person or persons obliged to serve in such patrols shall refuse or neglect to ride patrol, or to watch, stand centinel, or to keep guard, or shall refuse to obey the lawful commands of any person appointed to command such patrol, every person so offending shall forfeit any sum not exceeding One Hundred Pounds current money.

26. In times of invasion, rebellion or insurrection, when any person shall receive orders to march out of their county, parish or division, the captain or other commanding officer who shall be present, shall cause the names of all the persons who are entered, enlisted and enrolled in the muster-roll of such company (officers excepted) to be written down on small scrolls of paper, In times of invasion, &c. the names of so many persons as shall be ordered out of their counties to be drawn.

paper, which shall be folded up, and put into a hat, and shall be shaken together, and the clerk or serjeant of the said company shall draw out of the hat the names of so many persons as will not exceed three-fourth parts of the said company; and the persons whose names shall be so drawn, shall be obliged to march according to such orders as shall be given by the Governour or commander in chief; and the rest whose names shall be left in the hat shall stay in their respective parishes and divisions, and shall do the duty of the patrol as before directed; but no officer of any company shall be excused from marching with the company for which he is appointed, unless by particular orders from the Governour or commander in chief; and in that case such officer so directed to stay shall be commanding officer of that part of the company left for the patrol duty. If any person whose name is drawn as aforesaid, and is thereby obliged to march out of his parish or division, can provide an able man (to be approved by the majority of the officers of the company to which such person belongs) compleatly armed and furnished according to the directions of this act, every such person shall be permitted and at liberty so to do; and upon producing and sending out such able man in his stead, he shall be excused from going out or marching in person; but nevertheless he shall be obliged to do patrol duty in his district; and in case of disobedience, neglect or refusal to ride in such patrol, he shall be liable to all the penalties and forfeitures inflicted by this act.

Provisions,
horses, boats,
&c. may be
impressed in
times of a-
larm, by any
officer.

27. In time of an alarm, occasioned by any insurrection, rebellion or invasion, all field-officers and captains of every company are impowered, by themselves or their warrant to any inferiour officer or soldier, to impress any provisions, horses, boats, canoes, pettiaugers, and vessels with their furniture, or whatever other things they shall want or have need of for the service of this province; provided all such things so impressed be by the said officer brought before three or more indifferent persons, being freeholders, to be appraised and valued before they be disposed of, for the publick service; and such valuation and appraisement being made, the officer shall give a receipt for the same, if he conveniently can; and the officer is to cause his clerk to enter the same in a book to be kept for that purpose; and the said appraisers shall ascertain any loss or damage that may happen to the things so impressed, or allow a competent hire for

for the same when returned to the owner, as the case shall require, and shall give such appraisement under their hands to the owner, directed to the publick treasurer, who is to pay the same. And the commanding officer, or captain of each company, after such alarm shall be over, and before such company shall be discharged, is to order so many men as he shall think fit, to carry the several things, by him impressed, to the respective owners, who upon re-delivery of the same must give a receipt: The officer is likewise impowered to draw on the publick treasurer for so much money as he shall think the carriage of the said several things deserves.

28. The commanding officer or commander of each company, shall lodge in some convenient and secure place, for the publick use, all the provisions and ammunition impressed by him, or by virtue of his warrant, that shall remain unexpended after an alarm, and must keep a particular account thereof.

Impressed provisions & ammunition to be secured.

29. If any officer of the militia, or other person obliged to bear arms, shall knowingly or wilfully, in the time of rebellion, insurrection or invasion, offend in any thing against this act, or shall neglect or refuse to do, execute or perform any act, matter or thing required, directed, prescribed, or enjoined by him or them to be done, executed or performed, for which no particular penalty is by the said act inflicted, every such person so offending, neglecting or refusing, shall incur, forfeit and pay the following several mulcts, penalties and forfeitures, viz. If a commissioned officer above the degree of a captain, a pecuniary mulct or fine not exceeding Five Hundred Pounds current money; if a captain, or any interior commissioned officer, a pecuniary mulct or fine not exceeding Three Hundred Pounds current money; if a non-commissioned officer, or private person obliged to bear arms, a mulct or fine not exceeding One Hundred Pounds current money; if an indented servant who hath no goods to be levied on, and he neglects to pay the fine that shall be inflicted, for the space of Ten days, he shall receive corporal punishment, not exceeding Forty lashes, with a whip or switch, on the bare back.

Fines on all persons that offend this act in times of invasion.

30. Captains have power to appoint two persons in their respective companies to be serjeants, who are obliged to act and continue such for one year; and if any person so appointed, shall refuse or neglect to act and perform his duty as serjeant, or refuse to take the office upon him, he shall forfeit the sum of

Captains to appoint serjeants for their companies.

Ten

Ten Pounds for every offence, but shall not be liable to such fine more than once in seven years.

Offences by
whom to be
examined and
tried.

31. All offences committed by any field-officer, shall be heard, tried and determined by the Governour for the time being, and the majority of his Majesty's honourable council residing in this province; and all offences committed by any captain or inferiour commissioned officer, by a majority of the field-officers of the regiment or troop to which such captain or inferiour officer shall belong; and all offences committed by any non-commissioned officer, or private person obliged to bear arms, shall be heard, tried and determined by a majority of the commissioned officers of the troop or company to which such person shall belong, at such time or times as the said officers shall think fit to meet together; and the said commissioned officers of the troop or company, or a majority of them, shall proceed against such offender and offenders so summoned in the most expeditious and summary way, without observing formalities of law, only examining into the truth of the case, by the examination of witnesses upon oath, and such other evidences as can speedily be had; and upon conviction of any offender, the said Governour and council, or field-officers, or commissioned officers, respectively, are fully impowered to levy the penalties, by warrant of distress, and sale of the offenders goods: But in case the offender shall refuse to produce goods, then by warrant to commit the offenders to the common goal in Charlestown: which warrant shall be in the words following, viz.

Form of a
warrant.

South-Carolina, } ff. By ---, Commission Officers of the --- Com-
County. } pany of foot, in --- parish, commanded by ---

To the Serjeants of the said Company, and to the Keeper of the common goal in Charlestown.

WHEREAS it hath been duly adjudged by us, that A. B. a person inlisted and liable to bear arms in the said company for ---, has forfeited ---, for the offence of ---, the sum of --- current money; which sum the said A. B. has neglected to pay by the space of ten days next after the adjudication: These are therefore, in his Majesty's name, to charge and command you, and each of you, forthwith to apprehend the body of the said A. B. and him safely convey to the common goal in Charlestown, and that you deliver

deliver him to the keeper of the said goal, together with this warrant; hereby commanding you the said keeper to receive the body of the said A. B. and detain him in your custody, without bail or mainprize, until he shall pay and discharge the fine aforesaid, together with costs and expences attending the execution hereof, and the charge of his detainer in custody: Hereof fail not. Given, &c.

If the warrant be against the goods of offenders, &c. the recital must be the same as in the former warrant, and then say,

These are therefore in his Majesty's name to command and require you, and each of you, that you levy and cause to be made, of the goods and chattels of the said A. B. the sum of ----, and the same goods you expose to sale, and sell at publick outcry, first giving three days notice of such sale; and out of the money therefrom arising, you are first to deduct and keep the said sum of ----, and all reasonable charges and expences: and the overplus (if any there be) you shall return or tender to the said A. B. and this shall be your warrant. Given &c.

If any person against whose body such warrant shall be granted, be refractory, and refuse to give obedience thereunto, the persons to whom such warrant shall be directed, are empowered by forcible means to compel such offender to the common goal; and the charges and expences which shall attend the execution of the warrant of commitment, shall be taxed and ascertained by any justice of the peace in Charlestown, without fee or reward, and such taxation shall be delivered to the keeper of the goal, and the offender shall remain in prison without bail or mainprize, until the said fine and charges be fully paid and satisfied.

Refractory
persons how
to be dealt
with.

32. The serjeants of the several companies in the parishes of St. Philip and St. Michael, Charlestown, shall leave the following notice at the respective places of abode of such offenders, and the same shall be deemed to all intents and purposes equal to a personal service.

Particular
summons for
defaulters in
St. Philip and
St. Michael.

YOU A. B. are hereby summoned to be, and appear before the commissioned officers of the company in which you are enrolled, commanded by ----, on ---- next, at the house of ----, to shew cause, if any you have, why you should not be fined, (Here insert the offence) of this fail not at your peril.

33. The

Fines and forfeitures how to be applied.

33. The fines of the common men for non-appearance at general musters, shall be paid and applied to the use of the respective serjeants of the companies in which any neglect of appearance at general musters shall happen; and all other fines, mulcts, penalties and forfeitures, which shall be inflicted, levied or recovered by virtue of this act, shall be applied and disposed of as follows, that is to say, all fines and penalties not exceeding Three Pounds current money, in the foot service, shall be paid and applied to the use of the serjeants; and all fines not exceeding Five Pounds current money, incurred by any person in the troop or troops, to the marshal of the respective company or troop, to which the person, on whom the fine or fines shall be inflicted, doth belong; and all fines and penalties exceeding the said sum of Three pounds and Five Pounds current money, respectively, shall be and enure to the use of his Majesty, to be applied to the maintaining and keeping in repair the publick arms of this province, to be paid into the publick treasurer, to be issued by the direction of the General assembly.

Warrants and precepts how to be executed.

34. The marshal of each respective troop for the time being, is authorized and required to execute, or cause execution to be done, of all warrants, orders, and precepts, which shall be issued by the Governour and his Majesty's council, for recovering the penalties, mulcts and forfeitures inflicted by this act: And the marshal of each respective troop, and the serjeant or serjeants of the respective companies, shall respectively execute, or cause execution to be done, of all other warrants and precepts issued for the purposes aforesaid: But no execution against the body or goods of any offender shall be issued, till such persons, against whom the adjudication shall be made, have refused or neglected to pay their respective fines, by the space of Ten days after such adjudication.

Persons neglecting to execute warrants how to be dealt with.

35. If any person duly nominated and appointed marshal of a troop, or serjeant of a company, shall, after notice of such nomination or appointment, refuse or neglect to execute any warrant or precept issued in pursuance of the directions of this act, and to him or them directed, for the space of Twenty days after the receipt of the same, the said marshal or serjeant shall respectively forfeit, for each offence, the sum of Ten Pounds current money, to be recovered and disposed of as aforesaid.

36. In case any male person shall be in this province for the space of three months, and reside in any extra-parochial place, where the bounds of the counties or parishes are not certainly known or ascertained, every such person shall be entered, inlisted and enrolled, in the company of that parish or division which is nearest to the residence or habitation of such person; and such person shall be deemed and adjudged as belonging to such nearest company, to all intents and purposes whatsoever.

Where persons settled in extra-parochial places are obliged to muster.

37. Every master, mistress, owner, manager, attorney or trustee, of or for any slaves in this province, shall once in every year, on the first muster-day after the twenty-fifth day of March, return to the captain or commanding officer of the respective companies of the militia in whose beat or precinct such slaves do live or reside, or are commonly used or employed, a true and faithful list in writing of all the male slaves of such persons, or which are under their care or management, from the age of sixteen to the age of sixty years, and shall therein specify the names, ages, and country of such slaves respectively, according to the best of the knowledge and belief of the person returning the same; and such lists shall be returned by the respective captains to their respective colonels, and by them to the governour or commander in chief, within two months after the same shall be given to the said captains respectively.

A list of all male slaves to be returned by the owners, &c. once a year.

38. The governour or commander in chief for the time being, is authorised and impowered to direct and order the several captains of the companies of the militia of this province from time to time to enlist in their respective companies such and so many of the male slaves to be returned to them as aforesaid, and which shall be recommended to such captains by the respective owners or managers of such slaves, to be most faithful and fit for service, as the governour or commander in chief, by and with the advice of his Majesty's honourable council for the time being, shall in their discretion think necessary for the service and defence of this province; provided that the number of slaves so to be inlisted in the several companies without the limits of the parish of St. Philip, Charlestown, do not exceed in the whole the number of one-third of the white men in each respective company; and that the number of slaves so to be inlisted in the companies within the limits of Charlestown do not exceed one half part of the number returned within the said parish, proportioned as aforesaid.

Slaves recommended to be faithful to be enlisted.

In times of
invasion slaves
to be incor-
porated with
the militia.

39. The slaves to be enlisted as aforesaid shall be incorporated into the respective companies in which they are enlisted, and shall be taken as part thereof, and shall in time of general alarm and actual invasion of this province, and not otherwise, be armed by the respective owners or managers of such slaves with one sufficient gun, one hatchet, powder-horn and shot pouch, with ammunition of powder and bullets for twenty rounds, and six spare flints, and shall be sent by their respective owners or managers to the place of rendezvous of the respective companies in which they are enlisted, and they shall be then and there commanded and directed for the service of this province, by the captain or other commanding officer of the company, during all such times as the said companies shall be upon actual duty or continue under arms; and, instead of a pecuniary fining, such slaves for breach or neglect of duty shall be subject to such corporal punishment for their offences as the majority of the commissioned officers of the respective companies shall think fit to inflict, not extending to loss of life or member.

Seven shil-
lings and six-
pence per
diem to be
paid for the
use of each
slave: if kil-
led or wound-
ed the owner
to be satisfied.

40. The owners of slaves to be enlisted as aforesaid, shall be paid out of the publick treasury of this province for the time such slaves shall be in the publick service, after the rate of Seven Shillings and Sixpence *per* day for each slave: And in case it shall so happen that any slave so enlisted shall be killed in the service of this province, the owner of such slave shall be paid the full value of such slave out of the publick-treasury of this province; and in case any slave in the service aforesaid shall be only maimed and disabled, the owner shall likewise be paid out of the publick treasury the full value of his loss sustained thereby; and to the intent that such valuation may be justly and indifferently set, between the publick and the owner of the slave, the same shall be made by any three freeholders in this province, one to be named by the captain or commanding officer of the company in which such slave is enlisted, one by the owner or manager of such slave, and the third by the joint nomination of the two freeholders; and the valuation fixed by any two of the freeholders, and certified under their hands shall be conclusive between the publick and the respective owners.

Encourage-
ment for poor
free men,
white servants
and slaves, to
behave man-
fully against
an enemy.

41. Every poor free man or white servant, who shall boldly and chearfully oppose the common enemy, and shall in fight happen to be maimed or disabled from labour, he, upon obtaining a certificate thereof under the hands and seals of a majority of the

the field-officers of the regiment or troop to which he belongs, shall from thenceforth be entitled to, and shall yearly receive out of the publick-treasury of this province, during his life or abode in this province, the sum of Twelve Pounds proclamation-money ; but if such freeman, so maimed or disabled, shall be a married man, then he shall be entitled to, and receive out of the publick-treasury, during his life or abode in this province, the sum of Eighteen Pounds proclamation-money yearly ; and if it shall so happen, that any poor freeman that is a married man as aforesaid, or hath any child or children under the age of twelve years, shall lose his life in the service, then the widow of such poor freeman, shall thenceforth, during her widowhood and residence in this province, or the children of such poor freeman (where there is no widow) under the age aforesaid, until they attain the said age, shall be entitled to, and receive out of the publick-treasury of this province, the sum of Twelve Pounds proclamation-money yearly ; and the field-officers, and any two captains of the regiment to which such person belongs, associating themselves together, are declared to be proper judges of the poverty or indigence of every person so maimed and disabled, or killed, and certifying the same under their hands, intitles such persons so maimed or killed, and their widows and children respectively, to the respective bounties or allowances as aforesaid ; and every white servant in the said companies, and also every negro, or other slave, so enlisted, who shall actually engage the enemy in times of invasion of this province, and shall courageously behave themselves in battle, so as to kill any of the enemy, or take a prisoner alive, or shall take any of their colours, every such white servant and slave shall, upon due proof thereof, either by certificate of a field officer, or captain of any company, under his hand, who shall happen personally to see the action, or shall be informed thereof by the oaths of two credible white persons, shall be, and he is hereby declared to be from thenceforth free, and absolutely discharged from all slavery and service whatsoever. And the owner or owners of such white servants and slaves, so declared to be free, shall be satisfied for the full value of such white servants and slaves out of the publick treasury of this province, such valuation to be made and set in the same manner as is before directed for the valuation of slaves killed in the service ; but in case any such enlisted slaves shall manfully behave themselves in fight

X 2

with

with the enemy, but shall not have such success as to kill or take any enemy, or any of their colours, but who shall yet remarkably behave him or themselves in the engagement, so as to deserve publick notice, every such slave, upon obtaining a certificate thereof under the hand of any field officer, who shall certify such action, either from their own personal knowledge, or upon the oaths of any two creditable white servants, shall be entitled to, and receive from the publick treasury, yearly, and every year, a livery coat and pair of breeches, made of good red negro cloth, turned up with blue, and a black hat, and a pair of black shoes, and shall that day, in every year (during their lives) on which such action shall be performed, be freed and exempted from all personal labour and service to their owner or manager.

Which encouragement shall be published at the head of every company.

42. The clauses in this act relating to the encouragement therein mentioned, together with this clause, shall be publicly read by the respective captains of each company of the militia of this province, at the head of their companies, on the next muster-day of their respective companies, after the Twenty-fifth day of December next after the passing of this act; and every captain that shall neglect to publish the same, shall forfeit and pay the sum of Ten Pounds current money, to be recovered by the Church-wardens of the respective parishes where such omission shall be made, by warrant under the hand and seal of any justice of the peace in the said parishes, and such forfeiture shall be applied by the said Church-wardens, respectively, to the use of the poor of the parish in which such offence is committed.

Penalties on persons who do not give in lists of their slaves, or send them to the rendezvous in times of alarm.

43. Every master, mistress, owner, manager, attorney or trustee of, or for any slave or slaves, who shall refuse or neglect to make out and give in, and from time to time, renew a list of their several male slaves as before directed, every such owner and manager shall, for every such refusal or neglect, forfeit and pay any sum not exceeding Twenty Pounds current money; and every such owner or manager, residing where such slaves are employed, who shall refuse or neglect to send or bring his slaves that shall be enlisted in the militia, at all times of alarm and invasion, to the place of rendezvous of the respective companies, in which such slaves shall be enlisted, after such owner or manager hath had notice of such slaves being enlisted in the said companies, from the captains of such companies, every such owner and manager shall respectively, for every such refusal or neglect

neglect, for every such slave so inlisted, forfeit and pay the sum of One Hundred Pounds current money, to be recovered by a warrant under the hands of a majority of the field-officers of the regiment to which such persons belong, to be applied to such uses as the General Assembly shall direct.

44. The two master gunners to be appointed by the Governor or commander in chief for the time being, are obliged to take care of, and keep in good order, all the warlike stores in the said bastions respectively, in such sort and manner as the same may be at all times fit and ready for service, upon pain of forfeiting their pay, which shall be due at any time, when any neglect or omission of their duty shall be known or discovered; and the gunner for Broughton's battery is obliged to take care of the cannon on the curtain line, and the necessary stores for them in like manner, and under the same penalty.

The duties of the master-gunners of Broughton's and Craven's bastions.

45. The commissioners of fortifications for the time being, or a majority of them, are impowered, from time to time, and at all such times as they shall think fit, to view the cannon and other warlike stores kept in, and for the use of the said bastions and curtain line respectively, and to inspect and see whether the same are kept in such good and sufficient order as they ought to be; and upon any omission or neglect of duty of the said master gunners respectively, to certify the same under their hands to the Governor or commander in chief, in order to such master gunners being removed from their respective trusts and employments.

Commissioners of the fortifications to see that the said gunners do their duty.

46. The several companies of the regiment of Charlestown, and James-Island company, respectively, shall once in every six months, on a muster-day, by their respective officers, be trained and exercised in the use of the cannon or great guns; the regiment of Charlestown, in the said bastions respectively, and James-Island company at Fort Johnson; and the several men belonging to the said companies respectively, as well on such training and exercising days, as at all other times when the said companies shall be lawfully commanded to rendezvous at the said bastions and Fort Johnson, are obliged to be obedient to all the lawful commands of their respective officers, upon pain of incurring the same penalties as are by this act inflicted in other cases, for breach or neglect of duty.

The militia of James-Island and Charlestown to be exercised in the use of cannon.

47. If any person or persons whatsoever, shall be sued, impleaded, molested or prosecuted for any matter, cause or thing done,

Persons sued may plead the general issue.

done, or executed, or cause to be done or executed, by virtue of, or in pursuance of this act; and all and every person or persons who shall or may, by the command, or in aid or assistance of any person who shall do or execute, or cause to be done or executed, any matter or thing, by virtue of, or in pursuance of the directions of this act, shall and may plead the general issue, and give this act, and the special matter in evidence; and in case the plaintiff shall suffer a discontinuance, enter a *Noli Prosequi*, suffer a non-suit, or if a verdict or judgment shall pass against him, he shall pay to every defendant that shall be acquitted, or for whom judgement shall pass, his full double costs of suit.

A.A. 23 G.2. Enacts, That all and every defaulter and defaulters, at musters in the country parishes shall, (without being summoned) be obliged to attend one of the commissioned officers of the company in which such defaulter shall be enrolled, and make his excuse for not appearing at musters, on or before the next muster day; and unless such excuse shall be admitted by two commissioned officers of the said company, such defaulter shall be obliged to pay the fine inflicted by the first mentioned act.

A.A. 34.G.2.
Anno 1760.

Artillery company formed out of the militia of Charlestown; its number and establishment.

Entitled *An act for establishing and regulating the Artillery Company, which was formed out of the militia of Charlestown*, enacts, That the artillery company, formed out of the militia in Charlestown, consisting or to consist of a captain, captain-lieutenant, a first and second lieutenant, three lieutenant fireworkers, four serjeants, and not exceeding one hundred private men, to be classed and distinguished by bombardiers, gunners, and matrosses, in such numbers, and to serve by rotation in such manner as the captain of the said company shall direct, which said company is established and declared to be a separate and distinct company, any thing contained in the act for better regulating the militia of this province to the contrary hereof in any wise notwithstanding.

Persons inlisting in the artillery company to provide themselves with cloaths, arms, &c.
Excused from other militia duty.

2. Every person, as well those already commissioned or inlisted, as those who shall hereafter be commissioned or inlisted in the said artillery company, shall provide himself with such cloaths, arms, ammunition and accoutrements, as the captain of the said company for the time being shall direct and appoint: And every person belonging to the said artillery company shall be excused and exempted from all service whatever in any regiment, troop or company whatsoever, (the patrol duty excepted)

cepted) provided that no person whosoever shall be admitted to enlist in the said artillery company, unless he shall be first approved by the captain of the said company; and every person so enlisted shall obtain a certificate from the captain of the said company, specifying the time of his enlisting in the said company, which certificate the person so enlisted shall produce to the captain or commanding officer of the company of militia in the parish or division where the person so enlisted shall live or reside; and until such person so enlisted shall have produced and shewn such certificate, he shall be subject and liable to all the penalties and forfeitures inflicted by the militia act, for not keeping arms, or not appearing at the musters, training, and exercises, by the said act directed and appointed: And no person enlisted or to be enlisted in the said artillery company shall be discharged from the same without giving three months notice in writing to the captain of the said company of his intent to be discharged, and shall produce a certificate at the end of the said three months to the captain of the said artillery company, that he is enlisted in some other company; and upon such notice given and certificate produced, he shall be discharged from the said artillery company, and not otherwise.

To be approved of by the captain before enlisted.

A certificate of his enlistment to be produced to the captain or commanding officer of the company of militia where he resides.

Three months notice before he can be discharged.

3. It shall be lawful for the captain, and in his absence for the next commanding officer of the said artillery company to assemble, muster, train and exercise the said company, as well in the use of the firelock as of the artillery, at any time or times throughout the year, giving notice of such muster or training by beat of drum, or in such other expeditious manner as such captain or next commanding officer as aforesaid shall think fit; provided always that the said company shall not be obliged to meet at any such musters or trainings oftener than twelve, nor less than eight times a year.

Times for mustering, training and exercising the company.

4. In case any person belonging to the said artillery company, shall neglect or refuse to appear at any muster or training of the said company with such arms, ammunition, cloaths and accoutrements, as shall be directed and appointed by the captain of the said company, every such person shall forfeit and pay a sum not exceeding Three Pounds current money, which forfeiture shall and may be recovered in the same way and manner as the fine imposed in the like case, is appointed to be recovered by the said act for the better regulating of the militia, and shall be applied and disposed of in such manner as the majority

Penalties on such as shall neglect or refuse to appear at any muster, &c.

majority of the officers of the said artillery company shall think fit.

Penalty on
such as shall
refuse to obey
the command
of his officer.

5. In case any person belonging to the said artillery company, whilst the said company shall be under arms, or mustering, training or exercising, shall neglect or refuse to do his duty, or to obey the lawful command of his officer, the majority of the commissioned officers of the said company shall have full power and authority to inflict on the person so offending any pecuniary mulct not exceeding Five Pounds current money; and in case any such person shall be disobedient, or raise any mutiny or sedition, when the said company shall be under arms, or mustering, training or exercising as aforesaid, such person shall be subject to a fine not exceeding Ten Pounds like money; and the said officers, over and besides such pecuniary mulct, may imprison or confine the offender until the said company shall be discharged, and such officers may, if they think fit, cashier any offender in either of the cases aforesaid, and discharge him from the said artillery company.

Liable to ap-
pear and do
duty in all
times of
alarm.

6. That the said artillery company, as well officers as private men, shall be subject and liable to appear under arms, and do duty in all times of alarm in like manner, and under the same penalties and forfeitures as other companies of the militia in this province are subjected and made liable unto, by the aforesaid act for the better regulating the militia; and the said captain of the said artillery company is vested with the same power and authority, and shall proceed in the same manner as the other captains of the militia are impowered and directed to do by the act aforesaid for impressing provisions, horses, boats, canoes, perriaguas, and vessels with their furniture, or whatever things else he shall want or have need of, for the use of the said company in time of any alarm.

The captain
impowered to
impress pro-
visions, &c.

The com-
missary gene-
ral to furnish
an artillery
chest.

7. In case the artillery company shall be ordered upon service in any time of alarm, the commissary-general for the time being shall, at the expence of the publick, furnish the said company with an artillery chest and proper carriages, such as powder, carts and ammunition waggon.

Persons sued
may plead the
general issue,
&c.

8. If any person or persons whosoever shall be sued, impleaded, molested or prosecuted for any matter, cause or thing whatsoever, done or executed, or caused to be done and executed by virtue of, or in pursuance of this act, may plead the general issue, and give this act and the special matter in evidence.

Negroes.

Negroes and other Slaves.

* **E**NACTS, That all negroes, Indians (free Indians in amity with this government, and negroes, mulattoes and mustees, who are now free, excepted) mulattoes or mustees, who are now or hereafter shall be in this province, and all their issue and offspring born or to be born after the passing of this act, shall be and are hereby declared to be and remain for ever hereafter absolute slaves, and shall follow the condition of the mother, and shall be deemed, held and taken, reputed and adjudged in law to be chattels personal in the hands of their owners and possessors, and their executors, administrators and assigns, to all intents, constructions and purposes whatsoever. Provided always, that if any negro, Indian mulatto or mustee, shall claim his or her freedom, it shall and may be lawful for such negro, Indian mulatto or mustee, or any person or persons whatsoever on his or her behalf, to apply to the justices of his Majesty's court of Common-Pleas by petition, or motion, either during the sitting of the said court, or before any of the justices of the same court at any time in the vacation: And the said court, or any of the justices thereof, are fully empowered to admit any person so applying to be guardian for any negro, Indian, mulatto or mustee, claiming his, her, or their freedom, and such guardian shall be enabled, intitled and capable in law to bring an action of trespass in the nature of ravishment of ward, against any person who shall claim property in, or who shall be in possession of, any such negro, Indian, mulatto or mustee: and the defendant shall and may plead the general issue on such action brought, and the special matter may and shall be given in evidence; and, upon a general or special verdict found, judgment shall be given according to the very right of the cause, without having any regard to any defect in the proceedings, either in form or substance: and if judgment shall be given for the plaintiff, a special entry shall be made, declaring that the ward of the plaintiff is free; and the jury shall assess damages which the plaintiff's ward hath sustained, and the court shall give judgment and award execution against the defendant for such damages with full costs of suit: but in case judgment shall be given for the defendant, the said court is fully empowered to inflict such corporal punishment, not extending to life or limb, on the ward of the plaintiff, as they in their

A. A. 13.

G. 2.

Anno 1740.

What persons
are deemed
slaves.

discretion shall think fit. Provided always, that in any action or suit to be brought in pursuance of the direction of this act, the burthen of the proof shall lie upon the plaintiff, and it shall always be presumed, that every negro, Indian, mulatto or mustee is a slave, unless the contrary can be made appear (the Indians in amity with this government excepted) in which case the burthen of the proof shall lie on the defendant.

The defendant to enter into a recognizance to produce the ward of the plaintiff.

2. In every action or suit to be brought by any such guardian, appointed pursuant to the directions of this act, the defendant shall enter into a recognizance with one or more sufficient sureties to the plaintiff, in such sum as the said court shall direct, with condition that he shall produce the ward of the plaintiff at all times, when required by the court, and that whilst such action or suit shall be depending and undetermined, the ward of the plaintiff shall not be eloigned, abused or misused.

No slaves to be absent from home without a letter or a ticket.

3. No person whatsoever shall permit or suffer any slave under his or their care, or management, and who lives or is employed in Charlestown, or any other town in this province, to go out of the limits of the said town, or any other slave who lives in the country, to go out of the plantation to which such slave belongs, or in which such slave is usually employed, without a letter subscribed and directed, or a ticket in the words following :

Permit this slave to be absent from Charlestown or, any other town, or if he lives in the country, from Mr. ----'s plantation in ---- parish, for ---- days or hours, dated the ---- day of ----.

Or to that purpose or effect; which ticket shall be signed by the master, or other person having the care or charge of such slave, or by some other person by his or their order; and every slave who shall be found out of Charlestown, or other town, if such slave lives or is usually employed there, or out of the plantation to which such slave belongs, or is therein usually employed without a letter or ticket as aforesaid, or without a white person in his company, shall be punished with whipping on the bare back not exceeding twenty lashes.

Any person who shall give a ticket to a slave without his master's consent shall forfeit 20 l. to the owner.

4. If any person shall presume to give a ticket or licence to any slave, who is the property or under the care or charge of another, without the consent or against the will of the owner, or other person having charge of such slave, such person shall forfeit to the owner the sum of Twenty Pounds current money.

5. If

5. If any slave who shall be out of the house or plantation where he lives or is usually employed, or without some white person in company with him, shall refuse to submit to, or undergo the examination of any white person, it shall be lawful for any white person to pursue, apprehend, and moderately correct such slave; and if such slave shall assault and strike such white person, such slave may be lawfully killed.

Slaves refusing to be examined by any white person may be corrected; and if they resist may be killed.

6. If any negro or other slave, who shall be employed in the lawful business or service of his master, owner, overseer, or other person having charge of such slave, shall be beaten, bruised, maimed or disabled, by any person or persons, not having sufficient cause or lawful authority for so doing (of which cause the justices of the peace respectively may judge) every person and persons so offending, shall for every such offence forfeit and pay the sum of Forty Shillings current money, over and besides the damages after-mentioned, to the use of the poor of the parish in which such offence shall be committed. And if such slave or slaves shall be maimed or disabled by such beating from performing his or her work, such person or persons so offending shall also forfeit and pay to the owner or owners of such slave, the sum of Fifteen Shillings current money *per diem* for every day of his lost time; and also the charge of the cure of such slave. And if the said damages in the whole shall not exceed the sum of Twenty Pounds current money, the same shall upon lawful proof thereof made, be recoverable before any one of his Majesty's justices of the peace in the same way and manner as debts are recoverable by the act for the trial of small and mean causes: and such justice before whom the same shall be recovered, shall commit the offender or offenders to goal, if, he, she, or they, shall produce no goods on which the said penalty and damages may be levied, there to remain without bail, until such penalty and damages be paid.

Slaves beaten, &c. without cause, every person so offending shall forfeit 40s. to the poor.

7. Every justice within his respective county and jurisdiction, upon his own knowledge or view, or upon information received upon oath, may either go in person, or by warrant or warrants directed to any constable or other person, to command to the assistance any number of persons they shall see convenient, to disperse any assembly or meeting of slaves, which may disturb the peace, or endanger the safety of his Majesty's subjects, and to search all suspected places for arms, ammunition

Justices may command whatever number of persons they shall see convenient for dispersing any assembly of slaves, &c.

... or stolen goods, and to apprehend all such persons as they shall suspect to be guilty of any crimes or offences, whatsoever, and to bring them to speedy trial, according to the directions of this act; and in case any constable or other person shall refuse to obey or execute any of the warrants of such justices, within their several limits and precincts, or shall refuse to assist the said justices or constables, or any of them, when commanded or required, such person or persons shall forfeit and pay the sum of Five Pounds current money, to be recovered under the hand and seal of any other justice, in the same manner as directed by the act for the trial of small and mean causes.

Persons
maimed or
wounded in
taking run-
away slaves to
be rewarded
by the gene-
ral assembly.

8. If any person shall be maimed, wounded or disabled, in pursuing, apprehending or taking any slave that is run away, or charged with any criminal offence, or in doing any other act, matter, or thing, in obedience to or in pursuance of the directions of this act, he shall receive such reward from the publick as the General Assembly shall think fit, and if any such person shall be killed, his heirs, executors or administrators shall receive the like reward.

How slaves
are to be tried
for offences
capital.

9. All crimes and offences which shall be committed by slaves in this province, and for which capital punishment shall or may be lawfully inflicted, shall be heard, examined, tried, adjudged and finally determined, by any two justices assigned to keep the peace, and any number of freeholders not less than three, or more than five, in the county where the offence shall be committed, and can be most conveniently assembled; either of which justices, on complaint made, or information received of any such offence committed by a slave, shall commit the offender to the safe custody of the constable of the parish where such offence shall be committed, and shall without delay, by warrant under his hand and seal, call to his assistance, and request any one of the nearest justices of the peace to associate with him; and shall by the same warrant summon such a number of the neighbouring freeholders as aforesaid, to assemble and meet together with the said justices at a certain day and place, not exceeding six days after the apprehending such offender. And the justices and freeholders being so assembled shall cause the slave accused or charged to be brought before them, and shall hear the accusation which shall be brought against such slave, and his or her defence, and shall

A.A. 26 G.2.
Anno 1754.

shall proceed to the examination of witnesses and other evidence, and finally hear and determine the matter brought before them, in the most summary and expeditious manner. The said A. A. G. 2. enacts, "That it shall be left to the discretion of the justices and freeholders, at any time within six days after apprehending such slave, and his being committed by a justice for trial, to postpone the said trial to such further time as they shall think proper, upon oath being made before them, or affidavit produced to them, that the witnesses to such fact for which such slave was apprehended, are either ill, or at too great a distance to attend within the time prescribed." And in case the offender shall be convicted of any capital offence, the justices may give judgment, and award and cause execution of their sentence to be done, by inflicting such manner of death, and at such time as they, with the consent of the freeholders shall direct. The A. A. 24. G. 2. Anno 1751. enacts, "That it shall and may be lawful to and for the justices and freeholders upon such trial, or a majority of them, to mitigate the punishment to be inflicted upon the offender, in all and every case where any favourable circumstance shall appear, and induce them to be of opinion that such punishment ought to be mitigated."

10. If any crime or offence not capital shall be committed by any slave, such slave shall be proceeded against and tried in the manner before directed, by any one justice of the peace, and any two freeholders of the county where the offence shall be committed; and in case any slave shall be convicted before them of any offence not capital, the said one justice, by and with the consent of the freeholders, shall give judgment for the inflicting any corporal punishment, not extending to the taking away life or member, as he and they in their discretion shall think fit, and shall award and cause execution to be done accordingly. Provided always, that if the said one justice, and two freeholders, upon examination of any slave charged or accused before them, for an offence not capital, shall find the same to be a greater offence, and may deserve death, they shall, with all convenient speed, summon and request the assistance of another justice, and one or more freeholders, not exceeding three; which said justices and freeholders, newly assembled, shall join with the justice and freeholders first assembled, and shall proceed in the trial in the same manner as before directed for the trial of capital offences.

And for offences not capital.

Two justices
and one free-
holder; or
one justice &
two freehold-
ers to be a
Quorum on the
trial of slaves.

11. Two justices and one freeholder, or one justice and two freeholders shall make a *Quorum*, and the conviction or acquittal of any slave or slaves by such a *quorum* of them shall be final in all capital cases: but on the trial of slaves for offences not capital, it shall and may be sufficient, if before sentence be given, for inflicting a corporal punishment not extending to life or member, that one justice and one freeholder agree, that the slave accused is guilty of the offence with which he shall be charged.

Form of a Warrant to summon a Justice and Freeholders for the Trial of Slaves.

South-Carolina, } ff. By I. P. one of his Majesty's Justices of the
County. } Peace of the County aforesaid.

To any lawful Constable of the said County.

W H E R E A S information hath been made unto me, by I. C. of ----, labourer, that a negroe man slave named B. the property of M. O. of ----, planter, did, on the ---- day of ----, or in the night of ---- last past, (as the case shall be) at ----; in the county aforesaid, commit a felony, (here insert what the felony is particularly). And whereas the said negro man named B. has been by me committed to the safe custody of the constable of the parish of ----, in the said county, in order that the said negro man named B. may be brought to his trial for the said offence, agreeable to the directions of the act of assembly in that case made and provided: These are therefore in his Majesty's name, to require and command you, that you do immediately, after the receipt hereof, summon I. P. one of the nearest of his Majesty's justices of the said county, to associate with me at ----, on the ---- day of ----; and that you do likewise summon, A. B. C. D. E. F. G. H. and I. K. five of the neighbouring freeholders of the said county, to assemble and meet together with us the said justices, at the time and place aforesaid, in order to proceed in the trial of the said negro man named B. for the said offence. Herein fail you not at your peril.

Given under my hand and seal, the ---- day of ----, &c.

12. So soon as the justice or justices, and freeholders, shall be assembled in pursuance of the directions of this act, the said justices shall administer to each other the following oath:

Oath to be
administred
on the trial of
slaves.

I A. B. do solemnly swear, in the presence of Almighty God, that I will truly and impartially, try and adjudge the prisoner or prisoners,

prisoners who shall be brought before me upon his or their trial, and honestly and duly, on my part, put in execution, on this trial, an act, intituled, An act for the better ordering and governing negroes and other slaves, in this province, according to the best of my skill and knowledge.

So help me God.

And the justice or justices having taken the said oath, shall immediately administer the same to the freeholders, and shall then proceed upon the trial of such slave or slaves as shall be brought before them.

13. Not only the evidence of all free Indians without oath, but the evidence of any slave without oath, shall be allowed and admitted in all causes whatsoever, for or against another slave accused of any crime or offence whatsoever; the weight of which evidence, when seriously considered and compared with circumstances, is left to the conscience of the justices and freeholders.

Evidence to be allowed against slaves.

14. The evidence of any free Indian or slave, without oath, shall in like manner be allowed and admitted in all cases, against any free negroes, Indians, (the Indians in amity with this government only excepted) mulattoe or mustee; and all crimes and offences committed by free negroes, Indians, (except as before excepted) mulattoes or mustees, shall be proceeded in, heard, tried, adjudged and determined by the justices and freeholders appointed by this act for the trial of slaves, in like manner, order and form as is directed for the proceedings and trial of crimes and offences committed by slaves.

And against free negroes.

15. If any slave in this province shall commit any crime or offence whatsoever, which by the laws of England, or of this province, now of force, is or has been made felony without benefit of clergy; every such slave being duly convicted, according to the directions of this act, shall suffer death, to be inflicted in such manner as the justices, by and with the advice and consent of the freeholders, shall direct and appoint; unless such justices and freeholders, or a majority of them shall, by virtue of the authority granted to them by the 18th section of the Act of Assembly 24 Geo. 2. see cause to mitigate the punishment, on account of any favourable circumstance that may appear and induce them to be of opinion that such punishment ought to be mitigated.

Slaves shall suffer death for crimes made felony by the laws of England, or of this province.

16. If any slave, free negroe, mulattoe, Indian or mustee, shall wilfully and maliciously burn or destroy any stack of rice, corn,

Crimes declared felony.

corn or other grain; of the product, growth or manufacture of this province, or shall wilfully and maliciously set fire to, burn or destroy any tar-kiln, barrels of pitch, tar, turpentine or rosin, or any other the goods and commodities of the growth, produce or manufacture of this province, or shall feloniously steal, take or carry away any slave, being the property of another, with intent to carry such slave out of this province, or shall wilfully and maliciously poison or administer any poison to any person, free man, woman, servant or slave, every such slave, free negro, mulatto, Indian (except as before excepted) and mustee, shall suffer death as a felon, without the benefit of clergy.

Slaves who shall attempt to raise an insurrection or to entice other slaves to run away and leave this province shall suffer death.

17. If any slave shall be guilty of homicide of any sort, upon any white person, except by misadventure, or in defence of his master or other person, under whose care and government such slave shall be, shall, upon conviction thereof, suffer death: And every slave who shall raise, or attempt to raise an insurrection in this province, or shall endeavour to delude or entice any slave to run away and leave the province; provided, as it is provided by the 14th section of the Act of Assembly 24 Geo. 2. that it doth appear that such slave (so endeavouring to delude or entice other slaves to run away and leave this province) hath actually prepared provisions, arms, ammunition, horse or horses, or any boat, canoe or other vessel, whereby such their intentions shall be manifested, every such slave and slaves, and his and their accomplices, aiders and abettors, shall, upon conviction, suffer death: provided always, that it shall be lawful to and for the justices and freeholders, if several slaves shall receive sentence at one time, to mitigate and alter the sentence of any slave, other than such as shall be convicted of the homicide of a white person, who they shall think may deserve mercy, and may inflict such corporal punishment (other than death) on any slave, as they in their discretion shall think fit: Provided always, that one or more of the said slaves, who shall be convicted of the crimes and offences aforesaid, where several are concerned, shall be executed for example, to deter others from offending in the like kind.

All persons to appear & give evidence on the trial of slaves, & on refusal to be bound over to the sessions.

18. The justices, or any of them, are impowered and required to summon and compel all persons whatsoever, to appear and give evidence on the trial of any slave; and if any person shall neglect or refuse to appear, or appearing shall refuse to give evidence

evidence, or if any master or other person, who has the care or government of any slave, shall prevent or hinder any slave under his charge or government, from appearing or giving evidence in any matter depending before the justices and freeholders, the justices are impowered and required to bind every such person, so offending, by recognizance, with one or more sufficient sureties, to appear at the next general sessions, to answer such their offences and contempt; and for default of sureties to commit such offender to prison.

19. In case the master or other person having charge or government of any slave, who shall be accused of any capital crime, shall conceal or convey away such slave, so that he cannot be brought to trial and condign punishment, every master or other person so offending shall forfeit the sum of Two Hundred and Fifty Pounds current money, if such slave be accused of a capital crime; but if such slave be accused of a crime not capital, then such master or other person shall only forfeit the sum of Fifty Pounds current money.

Any person who shall conceal any slave accused of a capital crime shall forfeit 250 l. and for a crime not capital 50 l.

20. The constables in the several parishes within this province, where any slave shall be sentenced to suffer death, or other punishment, shall cause execution to be done of all orders, warrants, precepts and judgments of the justices appointed to try slaves, for the charge and trouble of which the constable or constables respectively shall be paid by the publick, unless in such cases as shall appear to the said justices and freeholders to be malicious and groundless prosecutions, in which cases the said charges shall be paid by the prosecutors, for whipping or other corporal punishment not extending to life, the sum of Twenty Shillings; and for every punishment extending to life the sum of Five Pounds current money, and such other charges for keeping and maintaining such slaves as are allowed to the warden of the Workhouse in Charlestown for keeping and maintaining any slave committed to his custody: for the levying of which charges against the prosecutor, the justice or justices are impowered to issue their warrant; and the constable who shall be directed to cause execution to be done, is impowered to press one or more slave or slaves, in or near the place where such whipping or other corporal punishment shall be inflicted, to whip or inflict such other corporal punishment upon the offender or offenders; and such slave or slaves so impressed shall be obedient to and observe all the orders and directions of the

Constables to cause execution to be done on all slaves.

And by whom their fees are to be paid.

Constables may impress any slave to inflict the punishment on offenders.

constable in and about the premises, upon pain of being punished by the constable, by whipping on the bare back not exceeding twenty lashes, which punishment the constable is empowered to inflict; and the constable shall, if he presses a negro, pay such negro Five Shillings for doing the said execution.

Persons who shall put any slave to work on Sunday shall forfeit 5 l.

21. If any person in this province shall, on the Lord's-Day, commonly called Sunday, employ any slave in any work or labour (works of absolute necessity, and the necessary occasions of the family only excepted) every such person in such manner offending shall forfeit the sum of Five Pounds current money for every slave they shall so cause to work or labour.

Slaves who shall strike a white person how to be dealt with.

22. If any slave shall presume to strike any white person, such slave upon trial and conviction before the justice or justices and freeholders, according to the directions of this act, shall for the first and second offence suffer such punishment as the justices and freeholders, or such of them as are empowered to try such offences shall in their discretion think fit, not extending to life or limb, and for the third offence shall suffer death: but in case any such slave shall grievously wound, maim or bruise any white person, though it shall be only the first offence, such slave shall suffer death. Provided always, that such striking, wounding, maiming or bruising, be not done by the command, and in the defence of the person or property of the owner, or other person having the care and government of such slave; in which case the slave shall be wholly excused, and the owner or other person having the care or government of such slave, shall be answerable as far as by law he ought.

Any person may apprehend a run-away slave, and send him to his master, if known, otherwise to the workhouse in Charlestown.

23. Every person in this province may take, apprehend and secure, any run-away or fugitive slave, and if the person taking up such slave knows, or can without difficulty be informed to whom such slave belongs, or who has the government and care of such slave, he must send the slave so taken to the master or other person having the government of such slave; but if the master or other person as aforesaid cannot be discovered, then such slave shall be sent to the custody of the warden of the workhouse in Charlestown: and the master or other person who has the care or government of such slave, shall pay for taking up such slave, whether by a free person or a slave Twenty Shillings current money: and the warden of the workhouse, upon the receipt of every fugitive or runaway slave, is required to keep such slave in safe custody, until such slave be lawfully dis-

The master is to pay 20 s. for taking up the slave.

The warden of the Workhouse to keep runaway

discharged, and shall, as soon as it conveniently may be, publish in the weekly Gazette such slave, with the best description he shall be able to give, first carefully viewing such slave naked to the waste, for any mark or brand, which he shall also publish, to the intent the owner or other person having the care and charge of such slave, may come to the knowledge that such slave is in custody; and if such slave shall make his escape through the negligence of the warden of the Workhouse, and cannot be taken within three months, the warden shall answer to the owner for the value of such slave, or the damages which the owner shall sustain by reason of such escape, as the case shall happen.

24. The warden of the Workhouse shall, at the charge of the owner of such slave, provide sufficient food, drink, cloathing and covering, for every slave delivered into his custody, and shall keep them to moderate labour, and advertise them in the Gazette in manner aforesaid, and on failure thereof shall forfeit all his fees due for such slave.

25. If any person take up any run-away slave, and deliver such slave either to the master or to the person having the care and charge of such slave, or to the warden of the Workhouse, shall be intitled to receive from the owner or warden of the Workhouse, upon the delivery, Fifteen Pence current money *per* mile, for every mile such slave hath been brought or sent, to be computed from such place where such slave was apprehended; and if such slave shall be delivered into the custody of the warden, the person delivering such slave shall give an account of his name, place of abode, and the time and place when and where such slave was apprehended, which account the warden shall enter down in a book to be kept for that purpose, and shall give a receipt for any slave delivered into his custody: and the warden is fully authorised to demand and receive from the owner, or other person having the care and charge of any such slave, for negroes committed from the month of October to March inclusive, for finding necessary cloathing and covering to be the property of the masters, any sum not exceeding Six Pounds; and the several sums following, and no other sum, fee or reward, on any pretence whatsoever (that is to say): For apprehending each slave, paid to the person who delivered such slave into custody, Twenty Shillings current money: for mileage paid to the same person Fif-

slaves in safe custody, and to publish the best description he can of such in the Gazette.

If any slave shall escape through the warden's negligence, he shall answer to the owner for the damages.

The warden to provide for slaves at the owners expence.

Persons taking up slaves to have mileage.

teen Pence like money: for a sufficient quantity of provision each day, for each slave Three Shillings and Ninepence like money: for advertising and publishing every slave as directed by this act Five Shillings like money, exclusive of the charge of printing: for receiving such slave Five Shillings, and for delivering of him Five Shillings: for poundage on money advanced, One Shilling in the pound like money. And the warden may lawfully detain any slave in custody until the said fees and expences be fully paid and discharged; and in case the owner of such slave, or his overseer, agent, manager, attorney or trustee, shall neglect or refuse to pay or satisfy the said fees and expences for the space of thirty days after the same shall be demanded, by notice in writing served on the owner of such slave, or (if the owner is absent from this province) upon his overseer, agent, manager, attorney or trustee, the warden shall and may expose any such slave to sale at publick outcry, and after deducting the fees and expences aforesaid, and the charges of such sale, shall upon demand return the overplus-money arising by such sale to any person who has a right to demand and receive the same.

Slaves in the warden's custody eighteen months and not claimed, shall be sold at publick outcry, &c.

26. If the owner or owners of such fugitive slaves shall not, within the space of eighteen months from the time of commitment, make his or their claim or claims, or it shall not otherwise be made known to the warden within the time aforesaid to whom such committed slave shall belong, it shall be lawful for the warden to sell such slave at publick outcry in Charlestown, he the warden first advertising such sale six weeks successively in the publick Gazette, together with the reason of the sale of such slave, and out of the money arising by such sale, to retain to himself what shall be then due for money by him disbursed on receipt of such fugitive slave, and for his fees and provisions, together with the reasonable charges arising by such sale, and the overplus (if any there be) shall be rendered and paid by the warden to the publick-treasurer for the time being, in trust nevertheless for the use of the owner or owners of such slave, provided the same by him, her or them, be claimed within one year and a day after such sale, or in default of such claim within the time aforesaid, to the use of the publick of this province.

Free negroes or slaves that shall harbour

27. If any free negro, mulatto or mustee, or other slave, shall harbour, conceal or entertain any slave that shall run away,

away, or shall be charged or accused with any criminal matter, every free negro, mulatto and mustee, and every slave being duly convicted thereof, according to the directions of this act, if a slave, shall suffer such corporal punishment, not extending to life or limb, as the justice or justices who shall try such slave shall in his or their discretion think fit; and if a free negro, mulatto or mustee, shall forfeit the sum of Ten Pounds current money for the first day, and Twenty Shillings for every day after, to the use of the owner or owners of such slave so harboured, concealed or entertained, to be recovered by warrant under the hand and seal of any one of his Majesty's justices for the county where such slave shall be so harboured, in like manner as debts are directed to be recovered by the act for the trial of small and mean causes. And in case such forfeiture cannot be levied, or such free negroe, mulatto or mustee, shall not pay the same, together with the charges attending the prosecution, such free negroe, mulatto or mustee shall be ordered by the justice to be sold at publick outcry, and the money arising by such sale, shall, in the first place, be paid and applied for and towards the forfeiture due and made payable to the owner or owners, and the charges attending the prosecution and sale, and the overplus, if any, shall be paid by the said justice into the hands of the publick treasurer, to be afterwards applied in such manner as the General Assembly shall direct.

28. No slave that dwells or is usually employed in Charlestown, shall presume to buy, sell, deal, traffick, barter, exchange or use commerce for any goods, wares, provisions, grain, victuals or commodities of any sort or kind whatsoever, (except as is before excepted) on pain that all such goods, wares, provisions, grain, victuals or commodities which by any slave shall be so bought, sold, dealt, trafficked or bartered for, exchanged or used in commerce, shall be seized and forfeited, and shall be sued for and recovered before any one justice assigned to keep the peace in Charlestown, and shall be applied and disposed of, one half to him or them who shall seize, inform, and sue for the same, and the other half to the commissioners of the poor of the parish of St. Philip; and the justice shall order every slave who shall be convicted of such offence, to be publickly whipped on the bare back not exceeding twenty lashes: Provided always, that it shall and may be lawful for any slave who lives or is usually employed in Charlestown, after such licence and ticket as is hereafter directed shall

runaways
how to be
dealt with.

Slaves residing in Charlestown not to buy or sell but under certain limitations.

Slaves living
in Charle-
town not to
buy nor sell
on their own
account.

No strong
liquors to be
sold to slaves.

Penalty
thereon.

Slaves not to
go out to
work without
a ticket.

shall be obtained, to buy or sell fruit, fish and garden stuff, and to be employed as porters, carters or fishermen, and to purchase any thing for the use of their masters, owners, or other person who shall have the charge and government of such slave, in open market, under such regulations as are or shall be appointed by law concerning the market in Charlestown, or in open shop kept by a white person.

29. No slave or slaves whatsoever, belonging to Charlestown, shall be permitted to buy any thing to sell again, or to sell any thing upon their own account in Charlestown; and it shall and may be lawful, for any person or persons whatsoever, to seize, take away all, and all manner of goods, wares and merchandizes, that shall be found in the possession of any such slave or slaves in Charlestown, which they have bought to sell again, or which they shall offer to sell upon their own accounts in Charlestown, one half of which shall be to the use of the poor of the said parish, and the other half to the informer, and shall be adjudged and condemned by any justice of the peace of the said parish.

30. If any keeper of a tavern or punch house, or retailer of strong liquors, shall give, sell, utter or deliver to any slave, any beer, ale, cyder, wine, rum, brandy or other spirituous liquors, or strong liquor whatsoever, without the licence or consent of the owner or such other person who shall have the care or government of such slave, every person so offending, shall forfeit the sum of Five Pounds current money for the first offence, and for the second offence Ten Pounds, and shall be bound in a recognizance in the sum of One Hundred Pounds current money, with one or more sufficient sureties, before any one of the justices of the court of general sessions not to offend in the like kind, and to be of good behaviour for one year; and for want of such sufficient sureties, to be committed to prison without bail or mainprize, for any term not exceeding three months.

31. No owner, master or mistress of any slave, shall permit or suffer any of his, her or their slaves, to go and work out of their respective houses or families without a ticket in writing, under the pain of forfeiting the sum of Ten Pounds current money for every such offence, to be paid, one half to the church-wardens of the parish, for the use of the poor of the parish where the offence is committed, and the other half to him or them that will inform and sue for the same, to be recovered in the same manner as debts are by the act for the trial of small
and

and mean causes ; and every person employing a slave, without a ticket from the owner of such slave, shall forfeit to the informer Five Pounds current money, for each day he so employs such slave, over and above the wages agreed to be paid such slave for his work : Provided nevertheless, that the said penalty of Five Pounds *per diem*, shall not extend to any person whose property in such slave is disputable ; and provided that nothing herein contained shall hinder any person or persons from hiring out by the year, week or day, or any other time, any negroes or slaves, to be under the care and direction of his or their owner, master or employer ; and that the master is to receive the whole of the earning of such slave or slaves, and that the employer have a certificate, or note in writing, of the time or terms of such slave's employment, from the owner, attorney or overseer of every such slave, severally and respectively.

32. No slave shall buy, sell, trade, traffick, deal or barter for any goods or commodities (except as before excepted) nor shall any slave be permitted to keep any boat, pettiauger, or canoe, or to raise and breed for the use and benefit of such slave, any horses, mares, neat cattle, sheep or hogs, under the pain of forfeiting all the goods and commodities which shall be so bought, sold, traded, trafficked, dealt or bartered for, by any slave, and of all the boats, pettiaugers or canoes, cattle, sheep, or hogs, which any slave shall keep, raise or breed, for the peculiar use, benefit and profit of such slave ; and it shall be lawful for any person or persons whatsoever, to seize and take away from any slave, all such goods, commodities, boats, pettiaugers, canoes, horses, mares, neat cattle, sheep or hogs, and to deliver the same into the hands of any one of his Majesty's justices of the peace, nearest to the place where the seizure shall be made, and such justice shall take the oath of such person who shall make any such seizure, concerning the manner of seizing and taking the same ; and if the justice be satisfied that such seizure hath been made according to the directions of this act, he shall pronounce and declare the goods so seized to be forfeited, and shall order the same to be sold at publick outcry, and the monies arising by such sale shall be disposed of as after directed. Provided always, if any goods shall be seized which come to the possession of any slave by theft, finding or otherwise, without the knowledge, privity, consent or connivance of the person who have a right to the property, or lawful custody of any such goods,

No slave to buy, &c. except as before excepted, nor to keep any boat, &c.

goods, all such goods shall be restored, on such persons making oath before any justice as aforesaid, who is hereby impowered to administer such oath, to the effect, or in the following words:

Oath to be taken by any person claiming goods seized in possession of a slave.

I A. B. do sincerely swear, that I have a just and lawful right or title to certain goods, seized and taken by C. D. out of the possession of a slave named E. and I do sincerely swear and declare, that I did not, directly or indirectly, permit or suffer the said slave, or any other slave whatsoever, to use, keep or employ the said goods, for the use, benefit or profit of any slave whatsoever, or to sell, barter, or give away the same, but that the same goods were in the possession of the said slave by theft, finding or otherwise, or to be kept, bona fide, for my use, or for the use of E. F. a free person, and not for the use or benefit of any slave whatsoever."

So help me God.

Which oath shall be taken *mutatis mutandis*, as the case shall happen. Provided also, that it shall be lawful for any person, being the owner, or having the care and government of any slave usually employed in any part of this province, without the limits of Charlestown, to give a licence or permission to sell, exchange or barter in Charlestown, or elsewhere, in this province, the goods or commodities of the owner or person having the government of such slave: Provided, that in such licence the quantity and quality of the goods and commodities with which such slave shall be intrusted, be particularly specified, and signed by the owner or person having the charge of such slave, or by some other person by his, her or their order and direction.

In what cases slaves may buy and sell in Charlestown.

33. The inhabitants of Charlestown may send their slaves residing therein to sell in open market any provisions whatever, brought from his, her or their estate in the country, to be sold at the first hand; and such slaves may buy any kind of provisions for the use of their master, mistress or employers families, they having a licence for so doing.

Slaves found out of their masters plantations how to be dealt with.

34. Any person whatever may take up any slave that shall be found out of the plantation of his or their owner, at any time, especially on Saturday nights, Sundays or other holidays, not being on lawful business; and the said slave or slaves may correct, by a moderate whipping; and also may disarm, take up and whip any slave or slaves found out of their owners plantation with offensive weapons, though such slave or slaves have a letter

letter or ticket: and if any owner of any slave or slaves permit such slave or slaves to beat drums, blow horns, or use any other loud instruments, or whosoever shall suffer and countenance any publick meeting or feasting of strange slaves in their plantations shall forfeit Ten Pounds current money for every such offence; provided an information or other suit be commenced within one month after forfeiture.

35. If any person whatever shall wilfully murder his own slave, or the slave of any other person, every such person shall upon conviction thereof forfeit and pay the sum of Seven Hundred Pounds current money, and be rendered incapable of holding, exercising or receiving the profits of any office, place or employment, civil or military, within this province: and in case such person shall not be able to pay the penalty, he shall be sent to any of the frontier garrisons of this province, or committed to the Workhouse in Charlestown, there to remain for the space of seven years, and to serve or to be kept to hard labour; and in case the slave murdered be not the property of the offender, the pay allowed to the soldiers of the out-garrisons, or the profits of the labour of the offender, if committed to the Workhouse, shall be paid to the owner of the slave murdered. If any person shall on a sudden heat or passion, or by undue correction, kill his own slave, or the slave of any other person, he shall forfeit the sum of Three Hundred and Fifty Pounds current money: and in case any person or persons shall wilfully cut out the tongue, put out the eye, castrate, or cruelly scald, burn, or deprive any slave of any limb or member, or shall inflict any other cruel punishment, other than by whipping or beating with a horse-whip, cow-skin, switch or small stick, or by putting irons on, or confining or imprisoning such slave, every such person shall, for every such offence, forfeit the sum of One Hundred Pounds current money.

Penalty on such person as shall wilfully murder any slave.

36. If any owner or other person having the care of any slave or slaves, shall deny, neglect or refuse to allow such slave or slaves under his or her charge, sufficient cloathing, covering or food, it shall and may be lawful for any person, on behalf of such slave or slaves, to make complaint to the next neighbouring justice in the parish where such slave or slaves live or are usually employed; and if there shall be no justice in the parish, then to the next justice in the nearest parish; and the justice shall summon the party against whom such complaint

Slaves to be allowed sufficient cloathing and food by their owners, &c.

A a

plaint.

plaint shall be made, and shall enquire of, hear, and determine the same; and if the justice shall find the complaint to be true, or that such person will not clear himself of the charge, by his or her own oath, which such person shall have liberty to do in all cases where positive proof is not given of the offence, the justice may make such orders for the relief of such slave or slaves as he in his discretion shall think fit, and may set a fine upon any person offending in the premises in any sum not exceeding Twenty Pounds current money for each offence, to be levied by warrant of distress and sale of the offenders goods, and paid to the church-wardens of the parish where the offence is committed, for the use of the poor.

When slaves are used cruelly, no white person being present, the person having the care of such slaves, &c. is deemed guilty of the offence, unless he can prove the contrary.

What apparel slaves are to wear.

37. If any slave shall suffer in life, limb, or member, or shall be maimed, beaten or bruised, contrary to the directions of this act, when no white person shall be present, or being present shall neglect or refuse to give evidence, or be examined upon oath concerning the same, in every such case the owner or other person who shall have the care of, and in whose possession or power such slave shall be, shall be deemed and taken to be guilty of such offence, and shall be proceeded against accordingly without further proof; unless such owner or other person as aforesaid do make the contrary appear by sufficient evidence, or exculpate him or herself by his or her oath, which oath is to be administered by the court where such offence shall be tried.

38. No owner or proprietor of any slave (except liverymen and boys) shall permit such slave to have, or wear any sort of apparel whatsoever, finer, other, or of greater value than negro cloth, duffils, kerseys, ozaburghs, blue linen, check linen or coarse garlix or calicoes, checked cottons, or Scots plaids, under the pain of forfeiting all and every apparel and garment that any slave as aforesaid shall wear, finer or of greater value than what is above-mentioned; and every constable or other person are authorised and required, when and as often as they shall find any slaves as aforesaid, having on or wearing any sort of garment or apparel whatsoever, finer, other, or of greater value than what is above-mentioned, to seize and take away the same, to his and their own use, benefit and behoof: Provided always, that if any owner of any such slave shall think the apparel of his slave not liable to forfeiture, he may apply to any neighbouring justice, who is authorized to determine any dispute that shall happen thereupon.

39. If

39. If any person shall fire or shoot off any gun or pistol in the night time after dark, and before day-light, without necessity, every such person shall forfeit the sum of Forty Shillings current money for each gun so fired, to be recovered by warrant from any one justice of the peace of the county where the offence is committed, and shall be paid to the church-wardens of the parish for the use of the poor.

Firing guns
in the night-
time, penalty
thereon.

40. No slave shall be permitted to rent or hire any house, store or plantation, on his or her own account, or to be used or occupied by any slave; and any person or persons who shall let or hire any house, room, store, or plantation to any slave, or to any free person to be occupied by any slave, every such person so offending shall forfeit and pay to the informer the sum of Twenty Pounds current money, to be recovered as directed by the act for the trial of small and mean causes.

Slaves not to
hire any
house, store,
plantation,
&c.

41. No men slaves, exceeding seven in number, shall be permitted to travel together in any high roads in this province, without some white person with them; and if any number of men slaves exceeding seven in number, without a white person with them, be seen and found travelling or assembled together in any high road, any person or persons may apprehend all and every such slaves, and whip them on the bare back, not exceeding twenty lashes.

Number of
slaves to tra-
vel in the
high roads

42. If any owner of slaves or other person who shall have the care, management or overseeing of any slaves, shall work or put any such slave or slaves to labour, more than fifteen hours in twenty-four hours, from the 25th day of March to the 25th day of September, or more than fourteen hours in twenty-four hours from the 25th day of September to the 25th day of March, every such person shall forfeit any sum not exceeding Twenty Pounds, nor under Five Pounds current money, for every time he, she or they, shall offend herein, at the discretion of the justice before whom the complaint shall be made.

Time limited
for keeping
slaves to la-
bour.

43. All and every person or persons whatsoever who shall hereafter teach, or cause any slave or slaves to be taught to write, or shall use or employ any slave as a scribe, in any manner of writing whatsoever hereafter taught to write, every such person and persons shall for every such offence forfeit the sum of One Hundred Pounds current money.

Slaves not to
be taught to
write.

44. No person or persons shall keep any slaves on his plan-
tation or settlement without having a white person on such

No persons to keep slaves on a plantation without a white person with them.

Persons taking slaves on the south-side of Savannah river, and bringing them to Charlestown, how to be rewarded.

plantation or settlement, under the pain of forfeiting the sum of Ten Pounds current money for every month which any such person shall so keep any slaves on any such plantation or settlement without a white person with them.

45. Any white person or persons, free Indian or Indians, who shall on the south side of Savannah river take and secure, and shall from thence bring to the Workhouse in Charlestown any negroes or other slave who shall desert from the services of their owners or employers, every such white person or persons, free Indian or Indians, on evidence of the said slave's being taken as aforesaid, and the same certified by any two justices of the peace in this province, shall be paid by the Publick-Treasurer of this province, the several rates and sums following, as the case shall appear to be: Provided always, that nothing in this clause contained shall extend to such slaves as shall desert from any plantation situated within thirty miles of the said Savannah river, unless such slaves last mentioned shall be found on the south-side of Alatamaha river (that is to say)

For each grown man slave brought alive, the sum of Fifty Pounds.

For every grown woman or boy slave, above the age of twelve years, brought alive, the sum of Twenty-five Pounds.

For every negro child, under the age of Twelve years, brought alive, the sum of Five Pounds.

For every scalp of a grown negroe slave, with the two ears, Twenty Pounds.

And for every negro grown slave, found on the South side of St. John's river, and brought alive as aforesaid, the sum of One Hundred Pounds.

And for every scalp of a grown slave, with the two ears, taken on the South side of St. John's river, the sum of Fifty Pounds.

Slaves bro't alive to be at the charge of the owners, &c.

46. The expence of taking and securing all slaves brought alive as aforesaid, shall be at the charge of the respective owners; and no slave taken on the South side of Savannah river, and brought to the work-house of Charlestown, shall be delivered out of the custody of the warden of the work-house, without a certificate to him first produced from the Publick Treasurer, that the money by him disbursed for taking and securing such slave is fully satisfied to the treasury, besides the following fees, which the treasurer is to allow, pay and charge for

for the trouble necessary to be taken concerning the place and manner of apprehending such slaves, viz.

To the two justices who shall examine, take and certify the said evidence, for each slave brought alive, the sum of Forty Fees on this occasion. Shillings.

And to the treasurer, for his trouble, Twenty Shillings.

To the warden of the work-house, Three Shillings and Nine Pence *per diem*, for the maintenance of such slave while in custody.

And on the commitment of any slave or slaves to the custody of the warden, where the Publick Treasurer shall expend any money for apprehending such slaves, the warden is required to advertize in the publick Gazette for the space of three months, the best description he can form of all such slaves, with the place and manner of their being taken: And in case the owner or employer of such slave or slaves, shall neglect within that time to redeem such slave or slaves, by fully satisfying the Publick Treasurer for the charges he shall be at, then, and in every such case, the Publick Treasurer shall be at liberty to dispose of every such slave or slaves, to the best bidder, at publick auction; which sale shall be deemed good and effectual to all intents and purposes, to the purchaser of such slave or slaves; and the produce of every such slave shall first go towards satisfying the expences of the Publick Treasurer and warden of the work-house, for taking, securing and keeping such slave, and the surplus, if any, shall be paid to the respective owner or owners.

47. Where any slave or slaves shall be tried and condemned to be executed for deserting out of this province, every such slave or slaves shall, before their execution, be valued by the tryers of the same; and in every such case the owner or owners of every such slave or slaves, shall be paid by the publick of this province the full sums and rates at which such executed slave or slaves shall be valued.

Slaves executed for desertion how to be paid for.

48. The charge of taking and bringing in of scalps as aforesaid shall be paid by the publick.

Scalps how to be paid for.

49. If any constable or other person, directed or required to do or perform any matter or thing required, commanded or enjoined by this act, who shall know, or be credibly informed of any offence committed against the same, within his parish, precincts or limits, and shall not give information thereof to some justice of the peace, and endeavour the conviction of the offender,

Penalty on persons refusing to comply with the directions of this act.

der, but wilfully and wittingly omit the performance of his duty in the execution of this act, and shall be thereof convicted, he shall forfeit for every such offence the sum of Twenty Pounds current money : And in case any justice of the peace, warden of the work-house, or freeholder, shall wilfully or wittingly omit the performance of his duty in the execution of this act, every such justice and warden of the work-house shall forfeit the sum of Forty Pounds current money, and every such freeholder shall forfeit the sum of Fifteen Pounds like money ; which several penalties shall be recovered and disposed of as is after directed. All grand juries, justices of the peace, constables and other officers, are required to make due and true presentments of such offences against this act as shall come to their knowledge.

How this act
is to be con-
strued.

50. This act, and all the clauses therein contained, shall be construed most largely and beneficially for promoting and carrying the same into execution : And for the encouragement and justification of all persons to be employed in the execution thereof, no record, warrant, precept or commitment to be made by virtue of the same, or the proceedings thereupon, shall be reversed, avoided, or any ways impeached by reason of any default in form.

Fines and
forfeitures
how to be re-
covered.

51. All fines, penalties and forfeitures, imposed or inflicted by this act, which are not particularly disposed of, or the manner of recovery directed, shall, if not exceeding the value of Twenty Pounds current money, be recovered, levied and distrained for, by warrant from any one justice of the peace, in the county where the offence shall be committed, according to the act for the trial of small and mean causes : And in case such fine, penalty or forfeiture shall exceed the sum of Twenty Pounds current money, the same shall be recovered by action of debt, bill, plaint or information in any court of record in this province. And all the fines, penalties and forfeitures which shall be recovered by this act, and are not particularly disposed of, one half to his Majesty, his heirs and successors, to be applied by the General Assembly, and the other half to him or them that will sue or inform for the same.

His Majesty's
part of the
fines, &c. to
be paid to the
justices.

52. His Majesty's part of the fines, penalties and forfeitures, which shall be recovered by virtue of this act, shall be paid into the hands of the justices, or in the court where the same shall be recovered, who shall enter a memorial and record of the payment of the same, and shall, without delay, send a transcript of such record to the publick-treasurer, which record shall be a charge

charge on the judge and justices respectively, to whom the same shall be paid; and the publick-treasurer shall and may levy and recover the same, by warrant of distress, and sale of the goods and chattels of the said judge and justices respectively, in case they, or any of them, shall neglect or refuse to make such record, or send such transcript, or neglect or refuse to pay the same to the treasurer within Twenty days after the receipt hereof; Provided always that no person shall be prosecuted for any fine, forfeiture or penalty imposed by this act, unless such prosecution shall be commenced within six months after the offence shall be committed.

* Enacts, That in case any commander of a patrol, or any commission officer of the militia, shall at any time receive information, that any fugitive or runaway slaves, who have been out thirty days or longer, are met together at any place to the number of three or more, such commander of the patrol, or commission officer of the militia, are obliged, enjoined and required, with all convenient speed, to summon a party of men under his or their command respectively, and with them forthwith to go in search of, and to take or disperse such fugitive slaves: And if such fugitives or runaways shall refuse to stand, or submit to be taken, it shall be lawful for such party to fire upon them, or any of them; and if any such runaway slave or slaves shall happen to be killed by such party, then any three freeholders of the neighbourhood, being first duly sworn by the next justice for that purpose, are empowered to ascertain the damages sustained by the owner or owners of such slave or slaves so killed, and to certify the same under their hands, or the hands of a majority of them, to the publick-treasurer for the time being, who shall pay such damages to the owner or owners of such slave or slaves out of the publick treasury: Provided the damage so to be ascertained shall not exceed the value of Forty Pounds proclamation-money for any one fugitive slave; and if any run-away slave or slaves shall happen to be wounded, maimed or disabled by such party, the damages may in like manner be ascertained and certified by three freeholders as aforesaid, which shall be paid to the owner or owners of such wounded, maimed or disabled slave or slaves out of the publick treasury: And in case the commander of any patrol, or commission officer of the militia after having received information of runaway slaves being got together as aforesaid, shall neglect or refuse, by the space of three days,

to

*A.A.24G.2.
Anno 1751.

The duty of
Commanders
of patrols, &
of commission
officers of the
militia touch-
ing runaway
or fugitive
slaves.

to summon a party of men, and go in pursuit of such fugitives, every such commander of the patrol, and commission officer shall forfeit the sum of Ten Pounds current money, for every such offence, to be recovered and applied as after directed: And in case any of the men summoned to be of such party, shall neglect or refuse to attend at the time and place appointed for that purpose, or after attending shall refuse or neglect to go in pursuit of such runaway slaves, every such offender shall forfeit the sum of Five Pounds current money, for every such offence, to be recovered and applied as after directed.

Such parties
are intitled to
a reward of
5 l. for every
fugitive slave
by them
taken.

2. There shall be paid the sum of Five Pounds current money, for every slave apprehended or taken by any party of the patrol or militia, by the owner or owners of such fugitive slaves; which may be recovered by warrant from any justice of the peace for the county.

Any white
person may
kill a fugitive
slave that has
been runaway
twelve
months, if he
cannot be
otherwise
taken.
Damages, &c.

3. It is lawful, to and for any white person or persons, to apprehend any notorious fugitive slave that shall have been run away for the space of Twelve months or upwards; And in case such fugitive slave cannot be otherwise taken, it shall be lawful for any such white person or persons to kill such notorious runaway; and the damages sustained by the owner of such runaway, shall and may be ascertained and certified in the manner before directed, which shall be paid out of the publick treasury: Provided such damage shall not exceed the sum of Thirty Pounds proclamation money.

No slave to
carry any fire
arms without
his master's
cleared land.

4. It shall not be lawful for any slave, on any pretence whatever, to carry a gun or any other fire arms with ammunition, to hunt, or for any other purpose, without the cleared lands of the master or owner of such slave, under the pain of being whipped, not exceeding Twenty stripes; and it shall be lawful to and for any white person or persons whatsoever, to seize, take away and keep to his or their own proper use, any gun, or any other fire arms, which he or they shall find in the possession of any slave without the cleared lands of the master or owner of such slave: Provided such person shall, within ten days, produce such gun or fire arms to a magistrate, and make oath that they were taken from a slave or slaves in pursuance of the directions of this act.

No freeman
to lend arms
to a slave:
penalty for
so doing.

5. In case any free negroe, mulattoe or mustee shall lend any arms of any kind whatever to any slave or slaves, all and every such arms shall be forfeited to the use of such person or persons:

persons as shall discover the same; provided that proof be made as aforesaid: And moreover, every such free negroe, mulattoe or mustee, so offending, shall forfeit and pay the sum of Five Pounds current money for every such offence, to the informer or informers, to be recovered by warrant from any justice of the peace for the county where the offence shall be committed; and in case such offender shall neglect or refuse to pay the said forfeiture forthwith, such justice shall order corporal punishment to be inflicted on such offender not exceeding twenty stripes.

6. In case any slave shall beat, or wilfully maim or wound the slave of another person, so that the master or owner of such beaten, maimed or wounded slave shall be deprived of his or her service or labour for any term or time whatever, the master or owner of the slave offending shall be, and he or she is obliged to make satisfaction to the person injured for the damages sustained thereby; provided the same shall not exceed the value of Four Pounds proclamation-money, which damages shall and may be recovered in the same manner as debts are recoverable by the act for the trial of small and mean causes.

7. Not only such negroes, mulattoes or mustees (whether free or bond) as shall administer poison to any person or persons (whether free or bond) but also all and every negro, mulatto or mustee (whether free or bond) who shall furnish, procure or convey any poison to be administered to any slaves or slaves, to any person or persons aforesaid; and also all such negroes, mulattoes and mustees (whether free or bond) as shall be privy (and not reveal the same) to the administering of any poison to any person or persons as aforesaid, or be privy (and not reveal the same) to the furnishing, procuring or conveying any poison, to be administered to any person or persons as aforesaid, shall be deemed and adjudged, and all and every of them are declared to be felons, and shall suffer death in such manner as the persons appointed and impowered by the act for the better ordering and governing negroes and other slaves in this province, for the trial of slaves, shall adjudge and determine.

8. Every negro, mulatto or mustee (whether free or bond) who shall give information of the intention of any other slave to poison any person, or of any slave that has furnished, procured or conveyed any poison to be administered to any person, shall upon conviction of the offender or offenders be intitled

One slave wilfully maiming that of another person, the master shall make satisfaction for the injury.

All negroes, &c. (bond or free) poisoning any person, procuring poison, or being privy thereto, to suffer death.

Any negro, &c. who shall give information of the intention of others to poison, &c. intitled to a reward.

to and receive a reward of Four Pounds proclamation-money out of the publick-treasury, to be drawn for by the justices before whom such offenders shall be tried ; provided always, nevertheless, that no slave shall be convicted upon the bare information of another slave, unless poison be found upon the party accused, or some other circumstance or overt-act appear, by which such information shall be corroborated. And provided also,

False inform-
ers how to be
punished.

9. That in case any slave shall be convicted of having given false information, whereby any other slave may have suffered wrongfully, every such false informer shall be liable to, and suffer the same punishment as was inflicted upon the party accused.

One slave
instructing
another in
the know-
ledge of any
poison to suf-
fer death, &c.

10. In case any slave shall teach another slave in the knowledge of any poisonous root, plant, herb, or other sort of poison whatever, he or she so offending shall upon conviction thereof suffer death as a felon ; and the slave or slaves so taught shall suffer such punishment (not extending to life or limb) as shall be adjudged by the justices and freeholders or a majority of them, before whom such slave or slaves shall be tried.

No physician,
apothecary,
&c. to em-
ploy any slave
in any place
where drugs
or medicines
are kept.

11. It shall not be lawful for any physician, apothecary or druggist, at any time to employ any slave or slaves in the shops or places where they keep their medicines or drugs under the pain of forfeiting the sum of Twenty Pounds proclamation-money for every such offence.

No negro
doctor to ad-
minister phy-
sick but by
the direction
of a white
person.

12. No negro or other slave, commonly called doctors, shall be suffered or permitted to administer any medicine or pretended medicine to any other slave, but at the instance or by the direction of some white person ; and in case any negro or other slave shall offend herein, he shall upon complaint and proof thereof made to any justice of the peace for the county, suffer corporal punishment not exceeding fifty stripes.

Negroes in
the country
not to sell
provisions to
any but their
masters or
mistresses.

13. It shall not be lawful for any negro or other slave to sell any rice or Indian corn out of Charlestown to any person whoever, other than their master or mistress : And in case any person or persons whosoever out of Charlestown shall purchase of any negro or other slave belonging to another person, any rice or Indian corn, without the consent of his master, he she or they shall forfeit the sum of Forty Shillings proclamation-money, besides the rice and corn so bought, for every such offence, to be recovered and applied as after directed.

14. In

14. In case any slave or slaves shall hereafter be put to death for any crime or crimes whatever, the justices, or one of them, with the advice and consent of any two of the freeholders who shall try such slave or slaves, shall before they award and order their sentence to be executed, appraise and value such slave or slaves so to be put to death, at any sum not exceeding Forty Pounds proclamation-money for any one slave, and shall certify such appraisement to the Publick-Treasurer, who is authorised to pay the same, one moiety thereof at least to the owner, and the other moiety or such part thereof, as such justices and freeholders shall direct to the person or persons injured by the offence, for which such slave or slaves shall suffer death.

Slaves executed to be valued: the money to be paid out of the treasury, and how to be applied.

Form of the Order to be made on the Publick-Treasurer, for the Value of a Slave capitally convicted.

South-Carolina, } ff. At a Court of Justices and Freeholders begun
County, } to be holden at ---- on the --- day of --- and
in the ---- year of his Majesty's Reign.

P R E S E N T,

A. B. }
C. D. } Justices.

E. F. }
G. H. } Freeholders.
I. K. }

The KING
AGAINST
A negro man named ---- the } Burglary (or as the case shall be)
property of --- of ---.

THE court met and proceeded in the trial of the prisoner, agreeable to the direction of the act of assembly in that case made and provided; and, after examination of witnesses against the prisoner, and hearing his defence, the court found the prisoner guilty, and passed sentence of death upon him: but before awarding and ordering the said sentence to be executed, appraised and valued the said negro man named --- at --- proclamation-money; and did direct the said sum of --- to be paid to ---. Certified and given under our hands the --- day of ---

A. B. &c.

To ---- Publick Treasurer of
the province of South-Carolina. }

B b 2.

15. In

Provision to
be made for
lunatick slaves
or poor per-
sons.

15. In case any slave belonging to a poor person in any parish in this province become lunatick, any justice of the peace for the county where such lunatick slave may be, is required and enjoined upon the first notice thereof, to cause such lunatick to be secured in some convenient place in the parish, as well to prevent his or her doing mischief, as for the better subsisting such lunatick slave; and the charge and expence of keeping and maintaining such lunatick shall be born and defrayed by the inhabitants of the parish respectively where the same may happen: And such charge and expence shall be assessed, levied and collected in and by an act of the General Assembly, intituled *An act for the better relief of the poor of this province, passed the 12th December 1712*: And the persons appointed by the said act to collect the poor-tax are vested with all the powers and authorities for assessing, levying and collecting the expence of keeping and maintaing lunatick slaves, as are given by the said act for assessing, &c. the taxes for the relief of the poor.

A greater re-
ward to be
paid for tak-
ing armed
fugitives who
defend them-
selves, and
have been out
six months.

16. If any person shall apprehend and secure any slave who shall have been run away from his master or owner for at least the space of six months, and who shall endeavour to defend himself with a knife, sword, cutlass, gun, pistol or other weapon, such person being a white man, shall, over and above the reward provided by law, in case of his being maimed, wounded and disabled, be intituled to a reward of Twenty Pounds current money from the master or owner of the said slave: and if such person be a slave, he shall be intituled to a reward of Ten Pounds current money in like manner, which reward shall be recovered by warrant from any one justice of the peace, upon oath made of the fact before him.

The punish-
ment of slaves
may be miti-
gated, where
favourable
circumstances
appear.

17. In all and every trial for any offence committed by any negro or other slave against the act for the better ordering and governing negroes and other slaves in this province, or against this act, it shall and may be lawful to and for the justices and freeholders upon such trial, or a majority of them, to mitigate the punishment to be inflicted upon the offender, in all and every case where any favourable circumstance shall appear, and induce them to be of opinion that such punishment ought to be mitigated.

18. All the fines, penalties and forfeitures, imposed or inflicted by this act, not exceeding the sum of Twenty Pounds current

current money, shall and may be sued for and recovered in the same way and manner as by the act for the trial of small and mean causes is appointed and directed. And such fines, penalties and forfeitures as shall exceed the sum of Twenty Pounds current money, shall and may be sued for and recovered by action of debt, bill, plaint, or information in any court of record in this province, and shall be applied one half to the use of his Majesty, to be disposed of by the General Assembly, and the other half to him or them who will inform and sue for the same.

Fines and forfeitures how to be recovered and applied.

* Enacts, that all and every person and persons who shall inveigle, steal, or carry away any negro or other slave or slaves, or shall hire, aid, or counsel any person or persons to inveigle, steal, or carry away any such slave, so as the owner or employer of such slave or slaves shall be deprived of the use and benefit of such slave or slaves, or that shall aid any such slave in running away, or departing from his master or employer's service, shall be, and he and they are declared to be guilty of felony; and being thereof convicted and attainted by verdict or confession, or being indicted thereof, shall stand mute, or will not directly answer to the indictment, or will peremptorily challenge above the number of twenty of the jury, shall suffer death as felons, and be excluded and debarred of the benefit of clergy.

*A.A.26G.2.
Anno 1754.

The jurisdiction given in the foregoing acts to justices and freeholders to try negroes, mulattoes and multees (bond or free) is of a mixed nature, the office of a judge and jury being blended together; nevertheless a record of such trials seems highly necessary, and the office of a justice of peace with whom such records are presumed to be, being temporary, it is humbly submitted whether the office of the clerk of the Crown and Peace, would not be a proper place for lodging such records?

Form of a Record of a Trial and Judgment in a criminal Case.

At a Court of Justices and Freeholders, holden at ---, the --- day of ---, Anno Domini ---, and the --- year of his Majesty's Reign.

P R E S E N T.

I. P.	} Esqrs. Justices,	A. B.	} Freeholders.
C. P.		C. D.	
		E. F.	
		G. H.	
		I. K.	

The KING	} Burglary, (or as the case shall be.)
AGAINST	
A free negro. named B.	

THE justices and freeholders being sworn agreeable to the directions of the act of assembly.

The prisoner was brought to the bar, when the charge against him was fully opened and explained to him; and he was thereupon asked if he was guilty of the felony whereof he stood indicted, or not guilty? To which the prisoner answered, not guilty; whereupon the court acquainted him that they were to proceed immediately upon his trial, and would hear his answer to the charge against him, and whatever witnesses he had to produce in his behalf, as well as those against him.

The witnesses produced to support the charge against the prisoner, as also the witnesses for him being duly examined and fully heard, the court, after mature consideration, found the prisoner guilty.

Upon which the said B. was asked, if he had any thing for himself to offer, or could say why the court to judgment and execution of him for the premisses ought not to proceed, and he saying nothing but what at first he had said, upon this, then and there, it was considered by the said justices and freeholders, that the aforesaid B. to the work-house of Charlestown, or to the custody of the constable of the parish of ---, (as the case shall be) from whence he came shall be sent back, and thence be led unto the place of execution, and there be hanged by the neck until his body be Dead, Dead.

Ordered,

Ordered, That the constable of ---, do cause this sentence to be put in execution on the --- day of --- next, between the hours of --- and ---.

I. P. }	Esqrs. Justices.	A. B. }	Freeholdere.
C. P. }		C. D. }	
		E. F. }	
		G. H. }	
		I. K. }	

Oaths.

- I. Of Oaths in general.
- II. The common Form of Oaths.
- III. Quakers Oaths.
- IV. Oaths of Infidels.

I. Of Oaths in general.

AN oath is a solemn calling or appealing to God Almighty as a witness of the truth of what we affirm or deny, in the presence of those who are duly authorised to administer it to us: All oaths must be lawful; if they are administered by persons in a private capacity, or not duly authorised, they are void, and those administering them are guilty of a high contempt, and punishable by fine and imprisonment: None can or ought to administer an oath, but those who are warranted by legal authority, therefore it is that the statutes do so often give power to justices of the peace to administer oaths. An oath what;

II. The common Form of Oaths.

THE forms of the oaths to be taken to the government, are inserted in the beginning of this book.

The following forms of oaths relate to the office of a justice of peace.

The oath of him who craves the peace against another.

The peace which you require against A. B. is not out of any ill-will or malice which you bear to him, but merely to preserve your life, house, goods or chattels, from any bodily harm or mischief, which you fear he by himself, or any other by his procurement may attempt to do you.

So help you God.

An

Oaths.

An Oath to be given upon Examination, or upon Information.

You shall true answer make to all such questions as shall be demanded of you concerning the beating of A. B. you shall speak the truth, the whole truth, and nothing but the truth.

So help you God.

The Oath of him that giveth Information.

The information that you shall give on the behalf of our Sovereign Lord the King against A. B. shall be the truth, the whole truth, and nothing but the truth.

So help you God.

An Oath upon a leading Question.

You shall true answer make to all such questions as shall be demanded of you.

So help you God.

III. Quakers Oaths.

IN all cases wherein, by an act of parliament, an oath shall be allowed and required, the solemn affirmation of Quakers shall be allowed instead of such oath; and that although no express provision be made for that purpose in such act.

The Quakers solemn affirmation instead of an oath, as finally settled by the 8. Geo. c. 6. is as follows,

I A. B. do solemnly, sincerely and truly declare and affirm.

IV. Oaths of Infidels.

Jews.

A JEW is to be sworn on the Old Testament, and perjury upon the statute may be assigned upon this oath. When they take the oath of abjuration, the words, *on the true faith of a Christian*, shall be omitted.

At the Council, December 9th, 1738. Present the two Chief Justices.

Mahometans.

On a complaint of Jacob Fachina against General Sabine, as Governor of Gibraltar, Alderman-Ben Menso, a Moor, was produced as a witness, and sworn upon the Koran.

Overseers.

Overseers.

* **E** NACTS, that if any overseer or manager of any plantation in this province shall embezzle, purloin, or willfully or through neglect, waste, spoil or abuse any goods or chattels committed to his trust, care or charge, by his master or employer, it shall and may be lawful for such master or employer to retain in his hands Twenty Pounds of the wages due to such overseer or manager, and to apply to any one justice of the peace; and such justice is required upon complaint thereof to him made by such master or employer, to issue his warrant to apprehend such overseer or manager, to bring him before such justice, who is impowered and directed to examine the said cause of complaint in a summary way, according to the act for the trial of small and mean causes; and upon conviction of the offender, by confession or other proof, or if judgment shall pass against him by default, to assess damages to the party grieved, and cause the same to be levied, in case such master or employer has not retained any of the wages of such overseer or manager in his hands, together with costs by execution: but in case the complainant shall be non-suited, or his complaint be disproved, then the justice shall award reasonable costs to the defendant, to be levied as aforesaid. Provided always, that nothing in this act shall be construed to authorize any justice of the peace, to award damages against the defendant beyond the sum of Twenty Pounds currency.

* A. A. 21.
G. 2. Anno
1747.

Overseers
how to be
proceeded
against, &c.

2. In case any overseer or manager shall employ upon his own account or business any of the negroes committed to his care, by sending them on errands, or in any other manner whatever, such overseer or manager shall pay the sum of Ten Shillings to his master or employer for every day he or they shall so employ any negro committed to his care, to be recovered as aforesaid. And the information of any of the negroes committed to the care of such overseer or manager shall be deemed sufficient proof in every such case, unless such overseer or manager will exculpate himself by oath before the justice, by whom the matter shall be tried.

Overseers to
account to
their employ-
ers if they
misemploy
the slaves un-
der their care.

3. This act shall be published at the head of every company of the militia in this province (Charlestown excepted) by the respective captains of such companies; and every captain

This act to be
published at
the head of
every com-
pany in the
country.

who shall refuse or neglect to publish the same accordingly shall forfeit the sum of Five Pounds, to be recovered before any justice of the peace for the county where the offence shall be committed, which forfeiture shall be applied one half to the use of the poor of the parish where the offence shall be committed, and the other half to the informer.

A.A.19.G.2.
Anno 1746.

Overseers
under whose
care any rice,
&c. is made
and shall be
forfeited, to
make good
the loss there-
of to their
employer.

Enacts, that whenever any rice, pitch or rosin, shall be sent from any plantation under the care and management of an overseer or manager, and where the employer does not then live, nor shall happen to be present, if such rice, pitch or rosin shall be forfeited on account of any unfair or fraudulent mixture, the loss of the rice, pitch or rosin so forfeited shall fall upon the overseer or manager of that plantation where the same was packed or filled, and the master or owner of such plantation shall have power to deduct the value of the rice, pitch or rosin so forfeited, out of the wages, share or stipend of such overseer or manager, or recover the same by legal process, if he shall think proper, unless such overseer or manager shall make it appear by the evidence of some white person, that to the best of his the said white person's opinion and belief, the barrels which contained the same were well headed and nailed or pegged in his presence, and that he saw the rice, pitch and tar fairly packed and filled in the same.

Patrols.

A.A.20.G.2.
Anno 1746.

In what man-
ner patrol
districts shall
be laid out,
and what per-
sons shall be
obliged to do
patrol duty.

ENACTS, that every captain of a company of foot militia throughout this province, except those after excepted, shall severally and respectively summon together his lieutenant and ensign, and shall in concert with them, where they all shall meet; and where they shall not, then any two of them, the captain being one unless absent or dead, shall subdivide and distinguish his and their company-district, into as many other convenient patrol-districts as they shall think most proper and consistent with the extent and situation of the general company-district, which said subdivided districts severally and respectively shall thenceforth be the patrol-districts in each parish, unless the same shall be thought necessary to be altered by the officers as aforesaid, and wherein the owners of settled plantations, as well as the other inhabitants of any such subdivided patrol-district

district (white servants excepted); and as well alarm-men as others, both of foot and horse, shall be subject to the patrol-duty of that district, and shall either by themselves in person, or by others employed for that purpose, do their patrol-duty regularly and successively, according to the true intent and meaning of this act. And in case any captain, lieutenant or ensign, shall omit or fail to subdivide and distinguish his or their company-district, in manner before enjoined, every such captain, lieutenant or ensign shall respectively be subject to pay the penalty of One Hundred Pounds current money, to be recovered in any court of record in this province, and shall be forfeited to his Majesty, and paid to the commissioners of the high roads in the parish where the offence shall be committed, and by them applied towards repairing the bridges and causeys in such parishes respectively. And that it may be known to what patrol-district the several persons belong, the clerk of each company respectively shall enter the patrol-districts in a book to be kept for that purpose, which book may be viewed by any person belonging to the company without fee or reward.

2. The captains of each company of foot militia shall in their several districts make out and keep from time to time a special patrol-list of every subdivided and distinct patrol-district, in which shall be inserted the names of all owners of settled plantations lying therein, as well women as men, except on such plantations belonging to women where there shall be an overseer to perform patrol-service, and as well alarm-men as others, whether they reside there or not, as also the names of all the white persons there inhabiting; provided that the masters of all overseers and white white, who by this act are obliged to do patrol-service, shall be obliged to furnish their overseers and servants with a horse and furniture for such service: Provided also, that every person having settled plantations in this province, on which white overseers shall be severally and constantly employed, shall not be subject or obliged to do patrol-service in those districts where such plantations lie, on which white overseers are employed as aforesaid, other than in which he shall actually reside; and which persons, male and female, whose names shall be so enlisted, except such infirm persons as shall be by the captain and one of his officers deemed unable to pay for the hire of a person to perform patrol-duty, shall be answerable for the patrol-service of that district severally,

Militia officers to keep special patrol lists.

Masters to account for their servants.

The nearest
set of inhabi-
tants to do
duty together.

Penalty on
such as shall
not appear to
do the patrol-
duty.

Inhabitants
of townships
exempted
from patrol
duty.

Patrol-service
to be per-
formed in
Charlestown.

successively, and in turns. And on every muster-day, the captains, or other commanders of the foot militia, shall out of every patrol-list, prick off the names of so many persons, as well women as men, and absentees owners of plantations there, as well as residents (except as before excepted) all the male persons of which lists, severally and respectively, whose names shall be so pricked off, shall by themselves or others employed and provided for that purpose, severally and respectively ride patrol, and do the service as after directed, from that muster-day till the next ensuing muster-day, when another patrol shall be pricked off in the like manner by equal turns, and so on time after time, on every ensuing muster-day, regularly, equally and successively, always chusing the nearest set of inhabitants mentioned in the general patrol-list to do duty together, that they may meet and assemble with the most convenience and expedition.

And if any man or women (excepting such women who have not ten slaves, and excepting as before excepted) owner of a settled plantation in any district, shall fail of having a sufficient person ready to perform the patrol-service on his, her or their behalf when thereunto required, or shall refuse to perform patrol-service, every such person shall forfeit and pay the sum of Thirty Shillings current money a night, to be recovered and applied as after directed.

3. Nothing in this act contained shall extend or be construed to compel the captains of the several companies of foot militia in any of the townships lately laid out in this province, to appoint the performing of patrol-duty in the said townships, but that they shall be exempt from the patrol-duties required by this act.

4. The captains belonging to the regiment of St. Philip's and St. Michael's Charlestown, shall prick off five men from the lists of their companies respectively, including as well horse as foot, alarm-men and others in the said parishes, beginning with the first company, and so through the list of the said companies (including troopers and others in the alarm list) on to the last company, which men so pricked off shall be obliged to perform the patrol-service for one month, and then to be relieved by five others; provided that no man in the said town shall be obliged to ride patrol in the said parishes, but such as pay Five Pounds *per annum* in the general tax;

tax; and the men so pricked off shall be subject and liable to the same penalties for breach or neglect of duty, in the said patrol-service, as the men pricked off in the country companies are subject and liable to: Provided always, that nothing in this act contained shall be construed or intended to subject the commander in chief for the time being, or any of the members of his Majesty's honourable council, or of the commons house of assembly, or their officers; the publick-treasurer, powder-receiver, commissary-general, comptroller of the country duties for the time being; nor any judges, ministers of the gospel, custom-house officers, or other persons commissioned by virtue of his Majesty's sign manual, or to the pilots or ferry-men in any part of this province, or any indented apprentice, to serve upon any patrol duty in person, in any district whatever.

5. The captain or commanding officer of every company shall have power in their several districts, from time to time to appoint one good and discreet person, from among the persons so pricked off, to be their commander; and in case such captain or commanding officer fail so to do before they leave the place of muster, then he shall be liable to a fine of Ten Pounds, to be recovered as after directed: And in case the commander of the patrol, so to be pricked off, shall neglect or refuse to do the duty by this act enjoined, it shall and may be lawful, to and for the captain or commanding officer of the company to inflict a fine upon him, not exceeding Five Pounds, to be levied, recovered and applied in the same manner as the fine next after mentioned. And that the commander of every patrol may have better authority to keep them in good order and demeanour during their time and turn of duty, it shall be lawful for every such patrol-commander, and they are required on any default or misbehaviour, or neglect of duty of any patrol-man, to inflict a fine upon him not exceeding Thirty Shillings, current money, for the use of the patrols, respectively, in which such neglect, default, or misbehaviour shall be committed, to be levied by distress and sale of the offender's goods, by virtue of a warrant for that purpose, directed to the serjeant of the company, under the hand and seal of the captain or commander of the company of that district, in whose company or patrol such neglect, default or misbehaviour shall happen or be committed; which serjeant shall be allowed One Shilling *per* mile, and One Shilling *per* Pound, for his trouble in levying the same.

Out of the persons pricked off to patrol, one shall be chosen to command.

6. Every

Patrols how
to be armed.

6. Every person undertaking as a proxy for another, to serve in the patrols as aforesaid, shall provide for himself, and keep always in readiness, and carry with him on his patrol-service, one good gun or pistol in order, a cutlass, and a cartridge-box, with at least six cartridges in it, under the penalty of Twenty Shillings current money, for want of such arms and ammunition, at such times and places as they shall be appointed by their respective commanders in their several districts.

Their duty.

7. Every patrol shall ride once at least in every fortnight, in their several and respective districts, and may take up all slaves which they shall see without the fences or cleared grounds of their owners plantations, who have not a ticket or letter to shew the reasonableness of their absence, or who have not some white person in company, to give an account of his, her or their business, and such patrol may correct every such slave or slaves by whipping with a switch or cowskin, not exceeding twenty lashes. Provided, that no patrol-man shall beat or abuse any slave, quietly and peaceably being in his master's plantation, or found any where out of the same, having a lawful ticket, under the penalty of Forty Shillings, to be recovered by warrant from a justice of the peace, upon oath, and paid to the owner of the slave so abused: And the said patrols shall have full power to search and examine all negroe-houses for offensive weapons and ammunition, and on finding any such, contrary to the act for the better ordering and governing of negroes and other slaves, shall then proceed according to the method by the said act directed.

Patrol may
enter tippling
houses.

8. The patrols in their several districts, or any two persons belonging to the said patrols respectively, have full power to enter into any disorderly tippling-house, or other house suspected of harbouring, trafficking or dealing with negroes, either of white persons, free negroes or others, and to apprehend and correct all disorderly slaves there found, by whipping as before directed. And the patrols in their several districts may search any such disorderly houses for stolen goods, if any are suspected to be there concealed, upon oath first made of such before a magistrate, and the same certified to the commander of the patrol.

Penalty on
officers who
neglect to
prick off pa-
tols.

9. In case the captain of any district, or other commanding officer, at any muster-day, or within five days after, shall fail or neglect to prick off a sufficient patrol for any district, according to the method prescribed by this act, each of the captains,

or

or other next commanding officer, shall, for such neglect or default, forfeit the sum of Forty Shillings for every patrol-district so unsupplied, to be recovered by a warrant under the hand and seal of any justice of peace for the county where the offence shall be committed, and shall go to his Majesty, and be paid to the commissioners of the high-roads in the parish where the offence shall be committed, and to be by them applied towards repairing the bridges and causeways in such parishes respectively.

10. Any person may send another white person, between the age of sixteen and sixty years to ride patrol for him, and to perform the other duties required of patrols. And if any captain or other officer, constable, patrol-man, or other person shall be sued, arrested, or impleaded for any matter or thing which he shall do or cause to be done by virtue of, or in pursuance of this act, every such person so sued, may plead the general issue, and give this act and give the special matter in evidence on the trial.

One person may ride for another.

Poor.

* **E**NACTS, that the vestries of the several parishes in this province, on the first or second meeting of each vestry, after Easter yearly, shall nominate two or more persons to be overseers of the poor of each parish, who shall continue in the said office to Easter following, or until the vestry of the parish can meet, and choose other overseers of the poor to succeed them: And in case of the death or removal out of the parish of any of the overseers of the poor, the vestry of the parish is empowered to nominate a fit person to supply the place of him so dead or removed: And every person so nominated and appointed overseer of the poor, who shall willfully refuse to serve in the said office, shall forfeit the sum of Ten Pounds, to be recovered as after directed.

* A. A. Anno 1712.

Vestries of parishes empowered to nominate overseers of the poor.

Penalty on such as refuse to serve.

2. The overseers of the poor so nominated and appointed, together with the church-wardens of the respective parishes, have the oversight, ordering and relieving of the poor in their several parishes, and have power to demand and receive all such gifts and legacies, and all such fines and forfeitures, and any other money or things whatsoever, as are given to the use of the poor; and in case of refusal to deliver or pay the same, to

The overseers and church-wardens to have the ordering and relieving of the poor.

com-

The poor
how to be
relieved.

commence and prosecute any lawful suit or action for the recovery thereof.

3, The poor of each parish shall be relieved out of all such money, goods or things, and out of such fines, mulcts and forfeitures as shall be given to the use of the poor; and in case the same shall not be sufficient, the respective vestry of each parish may, once in the year, at any time within two months after Easter, order three sober and discreet persons to assess such sum as shall be necessary to reimburse the church-wardens and overseers the money they have expended the preceeding year for the relief of the poor, and also Twenty Pounds over to remain as a fund in the hands of the church-wardens and overseers, for the relief of the poor the ensuing year. And by A. A. 31 G. 2. 1758, " The vestry of St. Philip, Charlestown, may order such
" sum to be assessed, according to the directions of the first
" mentioned act, as shall be necessary to reimburse the church-
" wardens and overseers, the money they have expended the
" preceeding year for the relief of the poor, and also any fur-
" ther sum not exceeding Two Hundred Pounds proclamation-
" money over, to remain for the use of the poor for the year
" ensuing, the said assessment to be made equally upon the es-
" tates real and personal, of all and every the inhabitants, ow-
" ners and occupiers of lands, tenements and hereditaments,
" or any personal estate within the several parishes; which as-
" sessment being returned to the vestry upon oath, who are re-
" quired to administer an oath accordingly, and being by them
" approved in open vestry, it shall then be lawful for any justice
" of the peace of the county, by a warrant under his hand and
" seal, directed to any of the constables of the several parishes,
" to levy the sum assessed upon each person by distress and sale
" of such persons goods as shall refuse the same, returning the
" overplus, after reasonable charges deducted, and for want of
" such sufficient distress, to commit the person to prison till
" payment be made; and the several constables of this province
" are required to execute such warrant, under the penalty of
" Ten Pounds for every neglect."

A person re-
siding three
months in a
parish to be
esteemed an
inhabitant.

4. Any person that hath been quietly and peaceably settled in a parish as a householder, sojourner, apprentice or servant, for the space of three months, shall be esteemed a settler or inhabitant in such parish: Provided such residing is not private, as sometimes in one house, and sometimes in another, nor by reason
of

of sickness, lameness or the like, nor being hired for a particular work for a time only, the home of such person being in another parish.

5. In case any person shall remove from one parish to another, and is likely to become chargeable, upon complaint made to a justice of the peace by the church-wardens or overseers of the parish, at any time within three months, that such person is likely to be chargeable to the parish, any one justice resident in that parish where such person comes to inhabit; and in case of no justice in the parish, then any justice of that county may by warrant remove and convey him to the parish where he was last legally settled, as a native, householder, sojourner, apprentice or servant, for three months at least, unless he give security for the discharge of the parish, to be allowed by the justice; and if such person shall refuse to go, or shall not remain in the place where he ought to be settled, but shall of his own accord come back to the place from whence he was removed, such person so offending shall be punished as a vagabond may be punished by any of the laws and statutes of England; and if any church-warden or overseer of the poor refuse to receive such person so to be removed, and provide for him as an inhabitant, any justice of peace may bind them to the General Sessions, Assize, &c. to be indicted for their contempt.

A person removing from one parish to another, and likely to become chargeable, may be sent to the parish from whence he came.

6. Poor sick persons coming to Charlestown for the assistance of physicians and medicines proper for their recovery; and being taken care of by the overseers of St. Philip's, a distinct account shall be kept of such charges, and the overseers of the poor of the parish to whom the persons so coming to Charlestown doth belong shall pay the same; and in case of refusal, the sum demanded may be recovered before a justice of peace, if Twenty Pounds or under, and if above that sum in a court of record, by action of debt or information, at the suit of the church-wardens of Charlestown.

Poor sick persons coming to Charlestown for physicians how provided for.

7. In case any person shall be so poor as to become chargeable to the parish, and hath a father or a grand-father, or mother or grand-mother, or child or grand-child, of sufficient ability to relieve such poor persons, the vestry of the parish, upon complaint made by the overseers of the poor, may order some one or more, or all of such relations to allow the poor person so much by the week as they shall think fitting; and in case of refusal to pay the same, it is lawful for any justice of

Poor persons intitled to an allowance from their relations able to relieve them.

the peace of the county, by his warrant directed to any of the constables to levy the same by distress and sale of the goods of such person or persons refusing to pay, and for want of sufficient distress may commit the offender to prison till payment be made, and the several constables are required to execute all such warrants under the penalty of Ten Pounds for every neglect.

Poor children
may be bound
apprentices.

8. When poor children become chargeable to the parish, they may be bound out by the church-wardens and overseers with the consent of the vestry, to be apprentices until the males arrive unto the age of twenty-one years, and females eighteen years or be married, or for a shorter time as they shall see convenient.

The church-
wardens and
overseers to
meet monthly

9. The church-wardens and the overseers of the poor of the several parishes shall meet monthly at the church, or some other convenient place, on the Sunday after divine service is over, there to consider and advise together of matters belonging to their office, and to use their utmost diligence in the execution thereof, on the penalty of Twenty Shillings for every neglect, without such reasonable excuse as shall be approved of by the vestry.

A register to
be kept of the
names of the
persons re-
ceiving col-
lections, &c.

10. There shall be kept in every parish, at the parish charge, a book or books wherein the names of persons receiving collections shall be registered, with the time they were first admitted to have relief, and the occasion of their necessity, which book shall be laid before the vestry when required, and yearly in Easter-week, or oftener, the parishioners shall meet, and have such books produced before them, and the persons receiving such collections, if required by any of the parishioners, shall be called, and the reasons of their taking relief examined, and a new list to be made and entered of such as they shall think fit to allow to receive collections.

The church-
wardens and
overseers to
account once
a year before
the vestry.

11. The church-wardens and overseers of the poor, once in the year, and oftener if required, shall account before the vestry; and in case any action or suit shall be brought and commenced by and in the name of the vestry against the church-wardens and overseers of the poor for any monies mispent by them, the evidence of the parishioners, other than such as receive alms of the parish, where the defendants are inhabitants, shall be taken and admitted.

12. Every

12. Every master of any ship or vessel, that shall bring any sick, lame or maimed seamen into this port, shall maintain and keep them here, and when they depart this port shall carry them off, or give sufficient security to the church-wardens and overseers for the maintenance and charge of such sick; and every master that shall neglect or refuse the same or any part thereof, shall forfeit the sum of Fifty Pounds for the use of the poor, to be recovered as is after directed; and every person that shall entertain any such lame or maimed seaman, without the knowledge and consent of the church-wardens or overseers, or any two of them, shall keep and maintain him or them so entertained at their proper costs and charges.

Masters of vessels to carry off their sick when they depart.

13. If sick or lame seamen shall not be in a condition to be carried off without danger of their lives, of which the church-wardens or overseers of the poor, or any two of them, are judges, then the master of the vessel to whom such seamen belong shall pay or cause to be paid into the hands of the church-wardens or overseers, towards the support of such seamen, all the wages that shall be due to such seamen, and no more.

When they cannot be carried off without danger of life, their wages to be paid by the master.

14. All the fines and forfeitures mentioned in this act shall be recovered, if Twenty Pounds or under, before a justice of the peace, to be paid to the church-wardens or overseers of the parish where the person inhabits against whom the forfeiture is recovered, for the use of the poor of the said parish; and all fines and forfeitures exceeding the sum of Forty Shillings, two-thirds thereof shall be paid to the church-wardens or overseers of the parish against whom the forfeiture is recovered, to be disposed of for the use of the poor, and the other third to him or them that will sue for the same by action of debt, &c. in any court of record in this province.

The fines and forfeitures in this act how to be recovered.

15. If any action, plaint, suit or information, shall be commenced and prosecuted against any person or persons for what he or they shall do in pursuance of this act, such person or persons so sued may plead the general issue, not guilty, and upon issue joined give this act and the special matter in evidence; and in case of a non-suit, discontinuance or verdict, the defendant shall recover treble costs.

Persons sued may plead the general issue.

Form of a Warrant for a Person to be examined concerning his Settlement.

Berkley } ff. By I. P. one of his Majesty's Justices of the Peace
County. } for the said County.

To any lawful Constable of the said County.

WHEREAS complaint hath been made unto me by the church-wardens and overseers of the poor of the parish of ---- in the county aforesaid, that A. P. hath come to inhabit in the said parish, not having gained any legal settlement therein, and is likely to become chargeable to the said parish of ----; These are therefore to require you to bring the said A. P. before me, to be examined concerning the place of his last legal settlement: Herein fail you not. Given under my hand and seal the --- day of ---.

Form of an Order of Removal.

Berkley } ff. By I. P. one of his Majesty's Justices of the Peace
County, } of the said County.

To the Church-Wardens and Overseers of the Poor of the Parish of G.; and to the Church-wardens and Overseers of the Poor of the Parish of F. in the County aforesaid, and to each and every of them.

COMPLAINT having been made unto me by the church-wardens and overseers of the said parish of G. That I. B. M. his wife, T. their son aged eight years, and A. their daughter aged four years, have come to inhabit in the said parish of G. not having gained a legal settlement there, and that the said I. B. M. his wife, T. and A. their children, are now or soon likely to become chargeable to the said parish of G. I, upon due proof made thereof, as well upon the examination of the said I. B. upon oath as otherwise, and likewise upon due consideration had of the premisses, do adjudge the same to be true; and I do likewise adjudge, that the lawful settlement of them the said I. B. M. his wife, T. and A. their children, is in the said parish of F. in the county aforesaid. I do therefore require you the said church-wardens and overseers of the poor of the said parish of G. or some or one of you, to convey the said I. B. M. his wife, T. and A. their children, from and out of your parish of G. to the said parish of F, and
them

them to deliver to the church-wardens and overseers of the poor there, or to some or one of them, together with this my order, or a copy thereof, at the same time shewing to them the original; and I do also hereby require you the said church-wardens and overseers of the poor of the said parish of F. to receive and provide for them as inhabitants of your parish. Given under my hand and seal the ---- day of ---- in the ---- year of his Majesty's reign.

Form of a Summons against a Defaulter for Non-payment of the assessed Poor's Rate.

Berkley } ff. By I. P. one of his Majesty's Justices of the Peace of
County, } the said County.

To any lawful Constable of the Parish of ---, in the County aforesaid.

COMPLAINT having been made unto me, by the church-wardens and overseers of the poor of the parish of ---, that A. O. of the said parish hath refused to pay the rate or assessment made for the relief of the poor of the said parish for this present year: These are therefore to require you to summon the said A. O. personally to appear before me at the house of ---, in ---, in the said county, on --- the --- day of ---, at the hour of ----, in the forenoon of the same day, to shew cause why he should not pay the said rate or assessment; otherwise he will be proceeded against as if he had appeared. Given under my hand and seal the ---- day of ----

The Warrant of Distress thereupon may be thus:

Berkley } ff. By I. P. one of his Majesty's Justices of the Peace
County, } of the said County.

To the Constables of the Parish of ---, or any one of them.

WHEREAS in and by a rate and assessment made, assessed and published, according to the acts of assembly in that case made and provided, A. O. a freeholder in the said parish of ---, was duly rated and assessed, for and towards the necessary relief of the poor of the said parish, for this present year, the sum of Twenty Shillings currency: and whereas it duly appeareth unto me, as well upon the oath of O. P. overseer of the poor of the said parish, as otherwise, that the said sum of Twenty Shillings hath been lawfully de-

demanded of the said A. O. and that he hath refused, and doth refuse to pay the same: And whereas the said A. O. hath appeared before me, and hath not shewed any cause why the same should not be paid: (Or, And whereas it hath been duly proved to me upon oath that the said A. O. hath been duly summoned to appear before me to shew cause why the same should not be paid, but he the said A. O. hath neglected to appear according to such summons:) These are therefore to require you forthwith to make distress of the goods and chattels of him the said A. O. and if within the space of five days next after such distress by you taken, the said sum, together with the charges of taking and keeping the said distress, shall not be paid, that then you do publickly sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you detain the said sum of Twenty Shillings, and also your charges of taking, keeping and selling the said distress, rendering to him the said A. O. the overplus on demand. And if no such distress can be made, that then you apprehend the body of the said A. O. and him safely convey to the common goal of Charlestown, and deliver him to the keeper thereof; Hereby requiring you the said keeper, to receive into your custody the said A. O. and him safely keep in your said goal, until he has fully paid and satisfied the said sum of Twenty Shillings, and the whole cost and charges that hath accrued thereupon. Herein fail not at your peril.

Given under my hand and seal the --- day of ----.

A.A. 16 G. 2.

Anno 1743.

Male white persons to go armed to church.

Enacts, That every white male inhabitant of this province, (except travellers, and such persons as shall be above sixty years of age) liable to bear arms, either in time of alarm or at common musters, who shall, on any Sunday, or Christmas-day in the year, go to any church or other publick place of divine worship, and shall not carry with him a gun, or pair of horse pistols, in good order, with at least six charges of gun-powder and ball, every such person shall forfeit and pay Twenty Shillings current money, the one half to the use of the poor of the parish where the offence shall be committed, and the other half to the informer, to be recovered according to the act for the trial of small and mean causes.

Penalty on the church-wardens and elders who shall neglect their duty.

2. The church-wardens of each respective parish, and elders of other places of publick worship (the parishes of St. Philip and St. Michael excepted,) who shall be at any church or place of publick worship, where any person, liable to bear arms, shall come

come without his gun or pistols, and ammunition as aforesaid, every such church-warden or elder shall inform against the person so offending, in order to recover the penalty aforesaid; and if such church-warden or elder shall wilfully neglect, after having notice of the said offence, to inform within Twenty days after the offence is committed, shall forfeit and pay, for every such neglect, to any person who will inform for the same, within Five days next after the expiration of the said Twenty days, Twenty Shillings current money, to be recovered as by the act for the trial of small and mean causes.

3. If any person, liable to bear arms, being at a place of public worship, shall refuse or neglect, on demand of the church-wardens or elders respectively, (or in case none shall be present, then on demand of any commissioned officer of the militia of this province) to produce and shew his gun or pistols, and ammunition as aforesaid, every such person so refusing, shall, for every such offence, forfeit and pay Twenty Shillings current money, to be recovered as aforesaid, one half to the poor of the parish where the offence is committed, and the other to the informer.

Persons obliged to produce their arms to the church-wardens.

Rape.

I. What it is.

II. Punishment of Rape.

III. Principal and Accessary.

I. *What it is.*

1. **R**APE is, when a man hath carnal knowledge of a woman by force and against her will. 2. *Inst.* 180.

2. Also, if any person shall unlawfully and carnally know and abuse any woman child under the age of ten years, whether with her consent or against it, he shall be guilty of felony without benefit of clergy. 18. *El. c.* 7.

3. The offence of rape is no way mitigated, by shewing that the woman at last yielded to the violence, if such her consent was forced by fear of death or duress: Also, it is not a sufficient excuse in the ravisher, to prove that the woman is a common strumpet; for she is still under the protection of the law, and may

Recognizance.

may not be forced; neither is it any excuse that she consented after the fact.

II. Punishment of Rape.

WHOSOEVER shall carnally know a woman by force and against her will, or carnally know and abuse a woman child, under the age of Ten years, shall suffer as a felon without benefit of clergy. 18. Eliz. c. 7.

III. Principal and Accessary.

ALL who are present, and actually assist a man to commit a rape, may be indicted as principal offenders, whether they be men or women. 1. Haw. 108. And so one woman may be a principal to the ravishment of another.

Recognizance.

A Recognizance is a bond of record, testifying the recognizer to owe a certain sum of money to some other; and the acknowledging the same is to remain of record; and none can take it but a judge or officer of Record. *Dalt. c. 168.*

2. Justices of the peace can take no recognizance, but only of such matters as concern their office; and every obligation and recognizance taken by them, must be made to our Lord the King, on pain of imprisonment of any person who shall take it otherwise. *Dalt. c. 168.* It must also contain the name, place of abode, trade or calling both of principal and sureties, and the sums in which they are bound. *Barl. Recog.*

3. When the parties are to enter into recognizance, call them by their names, thus:

You A. B. acknowledge to owe to our Sovereign Lord the King, the sum of ----; and you C. D. and E. F. acknowledge to owe to our Sovereign Lord the King, the sum of ---- each, to be levied of your respective goods and chattels, lands and tenements, for the use of our said Lord the King, his heirs and successors; if default shall be made in the condition following, (that is to say) if you the said A. B. shall make default in appearing, &c.

It is usual for the justices to mark at the foot of the examination, A. B. in 50 l. to appear, &c. and from such short note to make

make out a record afterwards; yet the recognizance is a matter of record directly, so soon as it is taken and acknowledged, although it be not made up. *Dalt. c. 168.*

The conditions of recognizances are interspersed under their proper titles.

Recognizance with Sureties.

Berkley } **BE** it remembered, that on the --- day of ---, in the County. { --- year of the reign of our Sovereign Lord George the Second, of Great-Britain, France and Ireland, King, Defender of the Faith, and so forth, A. O. of --- in the county aforesaid, yeoman, and A. S. of --- in the said county, taylor, and B. S. of --- in the county aforesaid, labourer, personally came before me I. P. Esq; one of his Majesty's justices assigned to keep the peace in the said county, and severally acknowledged themselves to owe to our said Lord the King, (that is to say) the said A. O. the sum of --- proclamation-money of America, and the said A. S. and B. S. each the sum of --- like money, to be made and levied of their goods and chattels, lands and tenements respectively to the use of our said Lord the King, his heirs and successors, if the said A. O. shall make default in the condition here under-written.

The condition of the above-written recognizance is such, that if the above bound A. O. shall, &c. (as the case shall be) then the said recognizance to be void or else remain its full force.

Acknowledged before me

J. P.

Rescue. (See Arrest.)

Rent.

It is a rule which all landlords should observe, either to get the tenant to make acknowledgment of the terms of his lease or tenure in presence of witnesses, or else to reduce these terms into writing.

How Landlords are to levy by Distress.

WHEN goods are distrained for rent, and are not within five days replevied after distress taken, they should be appraised by two sworn appraisers, and after five days notice sold, and the money arising from the sale applied first in payment of the rent due, the costs of distress, appraisement and sale, Stat. 2. W. & M. c. 5.

E e

and

and the overplus (if any) should be delivered or tendered to the tenant.

As it seldom happens that landlords distrain with their own hands, it is necessary they should empower a constable or other person to levy by distress, and that power should be in form following :

KNOW ALL MEN by these presents, That I ----
do hereby authorise and appoint ---- to take any person or persons to his assistance and enter into the house (or plantation) of ---- and there to make distress of all such goods and chattels as are upon the premises, for --- pounds for one quarter's rent, (or one year's rent, as the case is) due to me on --- instant (or last) ; and after the said goods are so distrained, if the said ---- doth not within the time limited in the act of parliament for that purpose made, replevy the same or pay the said rent, then and in such case I do hereby authorise you to cause the said goods to be appraised, sold and applied as by the said act is directed ; and for your so doing this shall be your warrant, witness my hand and seal this ---- day of ---- Anno Domini ----

When the goods are distrained by virtue of the above power the constable or attorney employed should immediately order them to be locked up in one of the rooms of the house, or removed off the premises, as shall be thought most safe, first taking an inventory, which must be entitled in this manner :

An INVENTORY of the several goods that were seized and distrained by me whose name is underwritten, in the house (or plantation) of ---- in ---- street in Charlestown (or any other place) by an authority of ---- to me for that purpose given, for ---- pounds, for one quarter's (or one year's) rent, due on the ---- day of ---- instant (or last) which goods were seized the ---- day of --- instant, for the use of the said -----.

IMPRIMIS, In the cellar, &c.

In the lower rooms, &c.

In the upper rooms, &c.

This inventory must be signed by the appraisers and by the constable or other person employed.

_____ } Sworn Appraisers.
Constable.

Together

Together with the copy of the above inventory the tenant must receive the following note :

Mr. -----.

By authority of your landlord ----, I have this ---- day of ---- 1766, seized upon part of your goods in your house in ---- in Charlestown (or plantation) for ---- pounds for a quarters (or years's) rent, due on the ---- day of ---- last, and have taken an inventory thereof, and locked up the same in one room up two pair of stairs (or in the cellar, or have carried the same off the plantation); and if you do not pay the rent due, or replevy the goods mentioned in the inventory, I shall in five days time, according to act of parliament, make sale thereof, of which take notice, from
Your humble servant, &c.

Witness, that a copy of the above notice was this day left at the house of ----, with his wife, servant or other person.

N. B. This officer must take care to keep a copy of the inventory and note.

Rice.

Under this title, *Pitch, Tar, Rosin, Turpentine, Beef, Pork, Shingles, Staves and Firewood* are included, on account that the regulations for weighing, &c. the said several commodities and merchandise are contained in an act of assembly, viz.

*** ENACTS,** That all and every person or persons whatever, who shall sell or expose for sale in any part of this province, any pitch, tar, rosin, turpentine, beef or pork, in any casks or barrels, shall first set on every such cask or barrel a burnt mark, with the first letter of the christian name, and the surname at length, of the maker of such commodity, with an iron brand directed by this act for that purpose. And if any person shall in any port or place of exportation within this province, sell or expose to sale any of the commodities before enumerated, in any cask or barrel before the same be marked and branded as aforesaid, every such person shall for every such cask or barrel forfeit the sum of Ten Shillings currency to the person or persons who will inform and sue for the

* A. A. 19.

G. 2.

Anno 1746.

same, to be recovered before any justice of the peace, in such manner as is provided by the act for the trial of small and mean causes.

And if any merchant, factor, trader or other person, shall ship or put on board any ship or vessel any of the said commodities before enumerated in any casks or barrels, with intent to export the same before such casks or barrels be marked and branded as aforesaid, every such merchant, factor, trader or other person, shall forfeit the sum of Ten Shillings for every such cask or barrel, to be recovered in manner aforesaid.

How rice suspected to be fraudulently packed shall be judged.

2. If any planter or other person shall sell or expose for sale to any merchant, factor, or any other person, at any port or place of exportation within this province, any casks or barrels of rice, which (upon opening or uncasking the same) shall be found to contain any unfair or fraudulent mixture of small or damaged rice, then and in every such case the seller of the said rice, or person offering the same to sale, shall immediately on the request of the buyer or person offering to buy the same, name one indifferent person being a freeholder, and the said buyer another, to view the said rice, and if such two persons shall agree in opinion, and certify the same in writing under their hands, that such rice was deceitfully and fraudulently packed and exposed for sale, every such cask or barrel so fraudulently packed and exposed to sale, shall be, and the same is declared to be forfeited to his Majesty, and to be applied in ease of the tax of the then current year; and the same shall be sold or caused to be sold by the publick-treasurer of the province, or by the person or persons who shall condemn the same, for the use aforesaid, who shall be allowed thereof 5 *per cent.* for their trouble. Provided always, if the seller shall refuse to nominate a person to view the said rice, that then the buyer shall nominate both the persons to view such rice, who shall have the same power as if one had been named by the seller and the other by the buyer. Provided also, in case the said persons so nominated shall not agree in opinion, they shall have power to nominate a third person, being a freeholder, who shall have the same power as the first two by this act have: and in case either of the said two persons shall refuse or neglect to join, or cannot agree in nominating such third person, then and in such case any justice of the peace, on notice given by both, or either of the said persons, shall and is required to nominate such third person,

person, which third person shall have the same power in the premises as if he had been nominated by both. Provided lastly, that such adjudication and certificate shall be made within twenty-four hours from the first application; and the said certificate shall be deemed a sufficient condemnation of the said rice to warrant the sale thereof as aforesaid.

3. Every person in this province shall make his and their casks for packing beef or pork of sound, dry, and well seasoned white or water oak timber, without sap, the heads as well as bodies of which casks shall be made tight so as to hold pickle, and shall fill the said casks with water before the same is packed with any beef or pork.

Beef and pork
barrels how
to be made.

4. Every barrel of pitch which shall be made and sold in this province shall contain three hundred and twenty-two pounds gross weight; every barrel of tar shall contain thirty-two gallons; every barrel of pork or beef shall contain thirty gallons, and two hundred pounds weight of wholesome well-cured meat in the same, which shall be weighed by the packers, and well packed with salt and pickle, each piece not to weigh more than eight pounds and not to be cut or mangled, further than to take out the kernels, or where the bones require it, and not more than two heads in one barrel of pork, but no beeves heads or shanks shall at all be packed; and every barrel of rosin or turpentine shall be clean, strained and merchantable, without chips, leaves, filth or dirt.

How the fe-
veral commo-
dities made
here for ex-
poration
shall be
packed.

5. In case any person whoever shall kill any cattle to put up in barrels for sale, without having first penned them twelve hours before killing them, every such person shall forfeit the sum of Three Pounds current money for every head of cattle so killed, to the person who will inform and sue for the same, to be recovered before any justice of the peace, according to the act for the trial of small and mean causes.

No cattle to
be killed for
exportation
without being
first penned
up at least 12
hours.

6. No merchant, factor, trader or other person, shall ship or put on board any ship or vessel for exportation from this province, any tar or turpentine before the same be marked by some publick packer, who shall be appointed for that purpose as is after directed; and if any person shall offend herein, he shall forfeit the sum of Twenty Shillings current money for each cask or barrel so shipped for exportation before the same be marked as aforesaid, to be sued for and recovered before any justice of the peace in this province, agreeable to the act for the

No tar or tur-
pentine to be
shipped off,
without the
brand of a
publick
packer.

the trial of small and mean causes, and the forfeiture shall go to the informer.

Tar and turpentine fraudulently marked to be forfeited.

7. In case any publick packer shall suspect any barrel or barrels of tar or turpentine (before he marks the same) to be fraudulent and deceitful, he shall acquaint the person treating for the purchase of the same, of such his suspicion, and shall be obliged to open and examine any such suspected cask or casks, barrel or barrels; and if the same shall appear to be fraudulently and deceitfully packed and exposed to sale the same shall be forfeited, and sold by the treasurer to such persons as will expend and use the same within this province, and applied to the same uses as is before directed in the case of rice.

As likewise pitch and rosin.

8. If any fraud or abuse shall be suspected in any barrel or barrels of pitch or rosin, which shall be brought to market or exposed to sale, the person who shall treat for the purchase of such pitch or rosin, shall be at liberty to cut open as many barrels of the same as he shall think proper, which shall be liable to be viewed, judged and forfeited, as before directed in the case of rice; and where any pitch or rosin shall be condemned as fraudulent, by the person or persons impowered (as is directed in the case of rice) to view and judge the same, all such condemned pitch and rosin shall be forfeited and sold by the treasurer, and applied to such uses as is before directed in the case of rice, Provided always, that where any pitch or rosin shall be ordered to be cut open as aforesaid, without the consent of the owner, or the person offering or exposing the same to sale, the same shall be done at the risque of the person who shall cause such pitch to be so cut open (that is to say) if such pitch or rosin shall not be condemned as fraudulent, by the person or persons empowered by this act to view and judge the same, that then the person who caused the said pitch or rosin to be so cut open and examined, shall take to himself every such barrel so cut open which shall not be condemned, and shall pay to the owner or person offering the same to sale, the current sum or price which good pitch or rosin shall then bear at that port or place.

Overseers under whose care any rice, pitch or rosin is made, that

9. Whenever any rice, pitch or rosin, shall be sent from any plantation, under the care or management of an overseer or manager, and where the employer does not then live, nor shall happen to be present, if such rice, pitch or rosin, shall, by virtue

virtue of this act be forfeited, on account of any unfair or fraudulent mixture, the loss of the rice, pitch or rosin so forfeited, shall fall upon the overseer or manager of that plantation where the same was packed or filled; and the master or owner of such plantation shall have power to deduct the value of the rice, pitch, or rosin so forfeited, out of the wages, share or stipend of such overseer or manager, or recover the same by legal process, if he shall think proper, unless such overseer or manager shall make it appear by the evidence of some white person, that to the best of his the said white person's opinion and belief, the barrels which contained the same were well headed and nailed or pegged in his presence, and that he saw the rice, pitch or rosin fairly packed and filled in the same.

shall be forfeited by this act, to make good the loss thereof to their employer.

10. No merchant, factor, trader or other person, shall ship for exportation on board any ship or vessel, any beef or pork for a foreign market, before the same be packed by the publick packer of that port or place where the same is intended to be shipped, and by the said packer marked or branded, on pain of every such person's forfeiting Twenty Shillings current money for every such cask or barrel.

No beef or pork to be exported unless first packed and marked by a publick packer.

11. The packers of the several ports of this province shall severally and respectively be nominated and chosen yearly, at the time of chusing parish-officers, by the freeholders of the respective parishes where such port is situated, who (before they enter into the execution of their office) severally and respectively shall take the following oath before some neighbouring justice of the peace for that county.

Packers to be chosen in the same manner, and at the same time with parish-officers.

I A. B. do solemnly and sincerely swear that I will faithfully and impartially execute the business and duty of a packer in the town and port of ---- without favour or prejudice to any person or party whatever, according to the best of my skill and judgment, and with the greatest expedition. So help me God.

The oath to be taken by the packers.

Provided always, that there shall be six packers for the port of Charlestown, and two for each of the other ports, and no more.

Provido.

12. The publick packers of the several ports of this province receive for their trouble, from the seller or owner of any tar, One Shilling for each barrel, and no more, for packing and marking the same with an hot iron; and for every barrel of turpentine which he or they shall mark or brand Sixpence; and Two Shillings and Sixpence for every barrel of beef or pork packed and marked as aforesaid.

Packer's fees.

13. All

Staves and
shingles for
exportation
how to be
made.

13. All staves made for exportation, and all shingles offered to sale in this province, shall be made of good and sound timber, and shall be of the following dimensions, (to wit) each pipe stave to be made of white oak, fifty-eight inches long, and not less than three quarters of an inch thick at the thin edge, and three inches broad clear of sap; each hoghead stave to be made of white or red oak, forty-two inches long, not to be less than three quarters of an inch thick at the thin edge, and four inches broad clear of sap; and each barrel stave of red or white oak to be thirty inches long, not less than half inch thick at the thin edge, and four inches thick clear of sap; and each shingle to be twenty-two inches in length, and not less than half inch thick at the thick end, and well shaved so as not to be winding, and not less than three inches and a half broad clear of sap. And in case there shall be any dispute between the buyer and the seller of any staves or shingles, concerning the merchantableness of them, the same shall be determined by the packers of the port or place in which such dispute may happen.

Firewood
how to be
corded, &c.

14. All firewood which shall be landed for sale, on any bridge, wharf or other landing-place in Charlestown, shall consist in four feet of length, and every cord shall be fairly and closely corded up before the same is sold or carried from the said bridge, wharf or landing-place, eight feet in length and four feet in height, and so in proportion for every half cord. And in case of any deficiency in the length of any wood so directed to be corded up, such deficiency shall be made up by a proportionable height according to the direction of the wood-measurer. And in case any person shall presume to sell, and carry off any firewood in Charlestown before the same is corded up, viewed and approved by the wood-measurer for the time being (unless it be by the consent and desire of the buyer) every such person shall forfeit the full price of the said wood, to the use of the Work-house of Charlestown, to be recovered agreeable to the directions of the act for the trial of small and mean causes.

Wood-measurers to be chosen annually.

15. That there be yearly, and every year chosen in manner aforesaid, four reputable persons being freeholders, residing in Charlestown, to be wood-measurers in the said town for the year ensuing; and the said wood-measurers, for their trouble in viewing and measuring each cord of wood landed and sold in

in the said town, shall be paid by the seller Sixpence currency for each cord so landed and sold.

16. Every person who shall be employed in weighing of rice, pitch, turpentine, beef, pork or any other merchandise, at any publick scales in Charlestown, or any other port in this province, shall, before he take upon him to do the same, take the following oath before any of his Majesty's justices of the peace, who are hereby required and impowered to administer the same.

All weighers,
to be sworn.

I A. B. do swear that I will faithfully, equally and impartially, weigh all rice, pitch, turpentine, pork, or other merchandise, that shall be weighed by me. So help me God.

And any person weighing any rice or other merchandise whatever, who cannot or shall refuse to produce a certificate of his having taken the said oath, being thereto required by the owner or person who offers such merchandize to be weighed, shall forfeit and pay Four Pounds proclamation-money, to be recovered agreeable to the directions of the act for the trial of small and mean causes, and applied to the use of the informer. Provided such information be made within six days after the offence is committed.

17. The commissioners of the market in Charlestown for the time being, or any two of them, are impowered and required once in every year to visit the several publick scales in Charlestown, and to try every of the weights made use of at any such publick scales by the standard weights lodged in the Treasury of this province; and in case the said commissioners shall find any false weights made use of at any such publick scales, the proprietor of such publick scales where such false weights shall be made use of, shall forfeit Four Pounds proclamation-money, to be recovered according to the act for the trial of small and mean causes, and applied to the use of the poor of Charlestown.

Commission-
ers of the
market to ex-
amine all the
publick scales
annually.

18. If any person shall be prosecuted for any matter or thing done in execution of this act, such person may plead the general issue and give this act and the special matter in evidence.

Persons sued
may plead the
general issue.

Riot, Rout and unlawful Assembly.

- I. What is a Riot, Rout or unlawful Assembly.
- II. How the same may be restrained by a private Person.
- III. How by a Constable or other Peace Officer.
- IV. How by a Justice.

I. *What is a Riot, Rout or unlawful Assembly.*

WHEN three persons or more shall assemble themselves together, with an intent mutually to assist one another against any who shall oppose them in the execution of some enterprize of a private nature, with force or violence against the peace, or to the manifest terrour of the people, whether the act intended were of itself lawful or unlawful, if they only meet to such a purpose or intent, although they shall after depart of their own accord without doing any thing, this is an unlawful assembly.

If after their first meeting they shall move forward towards the execution of any such act, whether they put their intended purpose into execution or not, this according to the general opinion is a rout. And if they execute such a thing in deed then it is a riot. *Dalt. c. 136.*

II. *How the same may be restrained by a private Person.*

BY the common law any private person may lawfully endeavour to suppress a riot, by staying those whom he shall see engaged therein, from executing their purpose, and also by stopping others whom he shall see coming to join them. *1 Haw. 159.*

III. *How by a Constable or other Peace Officer.*

BY the common law the provost-marshal, constable, and other peace-officers, may and ought to do all that in them lies towards the suppressing of a riot, and may command all other persons to assist therein. *1. Haw. 159.*

IV. *How by a Justice.*

IF a justice find persons riotously assembled, he hath not only power to arrest the offenders, and bind them to their good behaviour, or imprison them if they do not offer good bail,

bail, but he may also authorize others to arrest them, by a bare verbal command without other warrant, and that by force thereof the persons so commanded may pursue and arrest the offenders, in his absence as well as presence. And after a riot is over, a justice may send his warrant to arrest any person concerned in it, and for want of sureties may send such person to goal. 1 *Haw.* 160.

A Record of a Riot on View.

Berkley } ff. *BE* it remembered, that on the --- day of --- in the County, } --- year of the reign of --- I I. P. one of his Majesty's justices assigned to keep the peace in the said county, at the complaint and request of A. T. of --- in the county aforesaid yeoman, in my proper person have come to the house of him the said A. T. and then and there do find A. O. of --- yeoman, B. O. of --- yeoman, and C. O. of --- yeoman, and other malefactors and disturbers of the peace of our lord the King, to me unknown to the number of nine persons, in a warlike manner arrayed, to wit, with clubs, swords and guns, unlawfully, notoriously and riotously assembled, and the same house besetting, and many evils against him the said A. T. threatening (or as the case otherwise may be) to the great disturbance of the peace of our lord the King and terrour of his people.

Taken by me the year and day first above written.

I. P.

Committment of Rioters upon View.

Berkley } ff. *By* I. P. one of his Majesty's Justices of the Peace of County, } *the County aforesaid.*

To the Keeper of the common Goal of Charlestown.

UPON complaint made unto me by A. T. of --- in the county aforesaid yeoman, I did this present --- day of --- go to the house of the said A. T. and there did see A. O. of --- yeoman, B. O. of --- yeoman, and C. O. of --- yeoman, and others assembled in a riotous and unlawful company at --- aforesaid, to the terrour of the people, and against the peace of our sovereign lord the King, and against the form of the statute in that case made and provided. I do therefore herewithal send you the bodies of the said A. O.

F f 2

B. O.

Robbery.

B. O. and C. O. they being convicted of the said riot by my own view, testimony and record, commanding you the said goaler to receive them into your custody, and safely to keep them until they shall from thence be delivered by due course of law. And hereof fail not.
Given, &c.

Robbery.

- I. What it is.
- II. Principal and Accessary in Robbery.
- III. Punishment of Robbery.

I. What it is.

ROBBERY is a felony by the common law, committed by a violent assault upon the person of another, by putting him in fear, and taking from his person his money or other goods of any value whatsoever.

Taking a thing in a man's presence, is in law a taking from the person; thus, if one takes and drives my cattle out of my pasture, in my presence, this is robbery, if he makes an assault upon me, or put me in fear. *Hale's Pl. 73.*

II. Principal and Accessary in Robbery.

ALL that come in company to rob are principals, though one only actually do it.

III. Punishment of Robbery.

ROBBERY is generally excluded from the benefit of clergy. 3 *Inst.* 68.

The form of a warrant for apprehending a robber is inserted under the title *Hue and Cry.*

Seamen.

THE 2 G. 2. c. 36. enacts, That no master of a ship shall proceed on a voyage without agreement in writing with each mariner (apprentices excepted) to be signed by such mariner

riners for wages, on pain of Five Pounds sterling for each mariner, on conviction before one justice, by the oath of one witness, to be levied by distress; for want of distress to be committed till paid.

And if the mariner deserts after he hath signed the agreement, he shall forfeit the wages due to him at the time of deserting; and on application from the master, owner or commander of the ship, such justice may cause him to be apprehended; and if he shall refuse to proceed on the voyage, without sufficient reason, to the satisfaction of the justice, the said justice shall commit him to the house of correction, there to be kept to hard labour, not exceeding thirty days, nor less than fourteen days.

* Enacts, that if any person whatsoever, on any pretence * A. A. Anno
whatever, give any credit, loan or trust, to any mariner or 1696.
other person belonging to, and under the command of the No seamen to
master of any vessel, for any sum exceeding Five Shillings, be credited
except in trade by leave of the master he belongs to, then and in above Five
such case, he, she or they shall for every such default, lose all Shillings.
the monies and goods so credited, and shall over and above for-
feit double the value thereof: but if any mariners shall be vi- Proviso.
sited with sickness, then any justice of peace may by an order
under his hand, licence the master or mistress of any publick
house or ordinary, or any private house, to give credit for any
sum of money the master or mistress of any house is willing to
trust, for the necessary relief of such sick seamen.

2. If any person whatever, willingly and knowingly enter- Penalty on
tain, harbour or keep, or directly or indirectly suffer to be en- such as har-
tertained, harboured or kept, any seamen belonging to any bour and en-
ship or vessel, in his, her or their house or houses, exceeding tertain sea-
the space of twenty-four hours, without the consent and privy men.
of the master of such seamen, then he, she, or they so offend-
ing shall forfeit the sum of Twenty Shilling current money, for
every twenty-four hours he, she or they, shall so offend.

3. If any publick-house keeper entertains any seamen or ma- Penalty on
riners that belong to any ship, after eight of the clock in the publick house
winter at night, and nine of the clock in the summer at night, keepers that
who have not leave from their masters or commanders in writing entertain sea-
to be on shore, shall forfeit Twenty Shillings for each default. men after 8
o'clock at
night, &c.

4. All warrants or subpoenas given by justices of the peace, in
order to prosecute and sue for any penalty by this act made,
against

against any person on board any vessel, within the Bar of Ashley-River, which is within the body of Berkley county, shall be directed to the Provost-Marshal or Marshal of the Admiralty, or their lawful deputies, or any of the lawful constables of Charlestown, who are required and impowered to execute the said warrants and subpoenas.

A. A. 24 G. 2.
Anno 1751.

No tavern-keeper or victualer shall entertain any undischarged seamen more than one hour in twenty-four, &c.

Enacts, that it shall not be lawful to or for any tavern-keeper, punch-house keeper, or victualer within this province, to harbour, entertain, or employ any seamen or mariner exceeding one hour in four and twenty, or to furnish or supply any seaman with any victuals or strong liquor, above the value of Ten Shillings current money, without an order and direction in writing for so doing, under the hand of the master of the vessel to which such seamen belongs, under the pain of forfeiting the sum of Forty Shillings proclamation-money for every such offence, to be recovered as after directed. And in case such offender or offenders shall not pay or give sufficient security for the payment of the said forfeiture within ten days after being convicted, he, she and they shall, for the first offence be ordered by two justices before whom such offender shall be tried, to be put in the stocks for one hour; and for the second offence shall suffer one month's imprisonment without bail or mainprize: but seamen or mariners legally discharged from any ship or vessel, and producing a certificate of such discharge may be entertained the same as any other person.

Every master to give a list and description of his seamen to the Country-Comptroller, &c.

2. Every master of a vessel arriving in this province shall, under the penalty of Four Pounds proclamation for every neglect at the time of making his entry with the Country-Comptroller, deliver to the said Comptroller, a list of the names of all the seamen on board his vessel, together with a particular description of each of them, which shall be registered in a book to be kept for that purpose by the said Comptroller, to the intent, that in case any fugitive seaman shall be apprehended, it may be known to what vessel he belongs: and the Comptroller shall receive as a fee for the same One Shilling proclamation-money from every such master, and the like sum for every search or copy of such register from any person requiring the same.

Penalty on masters refusing certificates of discharge.

3. Every master of a vessel in this province shall, under the penalty of Four Pounds proclamation-money for every offence, deliver upon demand to every mariner under his command requiring the same, a certificate in writing *gratis* of the freedom of

of such mariner, if the time of his service by agreement, contract, or otherwise is expired; and upon refusal without just cause, any two justices of the peace are empowered and required upon application to them and due proof, to grant such certificates, which will be of equal force as given by the masters of vessels, for every of which certificates the justices shall receive Two Shillings proclamation-money, to be paid by the party found in the wrong; and the master is empowered to deduct the same out of the mariners wages, if he shall be found in default.

Seamen intitled thereto. Justices empowered to grant such certificates.

4. No master of a ship or other vessel in this province, shall hire, receive or entertain any seamen belonging to any other ship or vessel trading within this province, without such a certificate as aforesaid, under the penalty of Ten Pounds proclamation-money for every such offence, to be recovered as after directed.

Penalty on masters of vessels employing seamen without certificates of discharge.

5. Every free white person in this province is empowered to apprehend and secure any seaman that he shall know to be a deserter, and upon resistance to call to his assistance free persons or white servants.

All free white persons empowered to take fugitive seamen.

6. Every person apprehending and securing any fugitive seaman shall, under the penalty of Three Pounds proclamation-money, bring or cause to be brought such seamen, with all convenient speed, before the next justice of the peace to be examined, and if found to be a deserter, or without a certificate of discharge, shall, by order of the said justice, be sent from constable to constable, who are required to receive and conduct such deserter, until he is brought to the vessel to which he belongs, to be delivered to the master of the same, upon payment of the reward and charges by this act appointed, if such master is known and in this province, or otherwise to be delivered into the common goal or work-house in Charlestown, there to be kept until the master to whom he belongs demands him, and pays the said reward and charges: provided the master makes his demand within ten days after the committment of such seaman. And if no such demand, nor reward and charges be paid within that time; or in case the vessel to which such seaman did belong shall have departed this province, then the Provost-Marshal or warden of the work-house are empowered and required to deliver any such seaman to any other master of a vessel requiring him, and paying the said reward and charges,

Directions how to proceed upon taking such fugitives.

to

to be deducted out of the wages of such seaman by the master so paying the same.

The reward and charges allowed for taking up fugitive seamen. Fees to justices, &c.

7. Every person apprehending a fugitive seaman, shall receive for the same Twenty Shillings proclamation-money, to be paid as before directed; and the charges, fees and mileage payable to the officers, constables, and other persons directed and impowered to put this act in execution, shall be the same as limited and ascertained by the following table, viz.

		Proclamation money.		
		L.	s.	d.
To the person carrying any fugitive seaman from the place where apprehended to the justice, <i>per</i> mile, - - - - -	}	0	0	3
To the justice before whom such seaman is brought for examining the matter, and order thereon, - - - - -	}	0	2	0
To the constable, <i>per</i> mile, from the place he receives, to the place where he delivers such seaman, besides ferriage and diet, - - - - -	}	0	0	3
To goal-keeper, or warden of the work-house, for receiving and discharging such seaman, - - - - -	}	0	2	6
To diet <i>per</i> day for each seaman, allowing at least one pound of bread, and one pound of flesh, wholesome provisions, - - - - -	}	0	1	3

Penalty for transporting fugitive seamen over ferries.

8. Every person keeping a ferry within this province who shall wilfully transport, or suffer to be transported, any seaman not having a certificate of discharge as before directed, shall forfeit and pay the sum of Four Pounds proclamation money, for every such offence, to be recovered and applied as after directed.

No process to issue against masters of vessels till the cause of action be approved of by the judge.

9. No writ, warrant or other process whatsoever, shall be issued out of any court of this province, against the master or commander of any ship or other vessel, upon the complaint, or at the suit of any seaman or mariner, for any act, matter, cause or thing whatsoever, until the cause of action be first shewn to, and approved of by the judge or one of the justices from whence such writ, warrant or other process is to be issued. And in case any attorney, solicitor, proctor or other practitioner in the law whatever, shall issue any such writ, warrant or other process without having first shewn cause, and the action approved of, he shall be liable to pay all the costs and damages accruing by such action.

And

And the Act of Assembly 28 G. 2. intituled *An Act to revive and continue the several acts therein mentioned, and for amending an act for the better restraining seamen from absenting their service*, enacts, That every seaman and mariner, who shall be minded to commence any action or suit against the master or commander of any ship or other vessel, for any act, matter, cause or thing whatsoever, shall not only first shew cause of action; but shall also give sufficient security, by recognizance or otherwise, to be taken and approved of by the judge or judges, justice or justices of the court from whence process is prayed, that the seaman or mariner who is plaintiff in such suit, shall and will prosecute the same to effect; and that all such actions and suits as shall be commenced, sued or prosecuted, without cause of action shewn and security first given, shall be null and void to all intent and purposes.

10. All the fines, penalties and forfeitures, imposed or inflicted by this act, shall, if not exceeding the sum of Four Pounds proclamation-money, be recovered by warrant from any one justice of the peace of the county where the offence shall be committed, according to the act for the trial of small and mean causes. And in case such fine, penalty or forfeiture, shall exceed the sum of Four Pounds proclamation-money, the same shall and may be recovered by action of debt, or information in any court of record in this province. And all the said fines, penalties and forfeitures, shall be applied, one half to his Majesty, to be appropriated by the General Assembly, and the other half to him or them who will inform and sue for the same.

Penalties inflicted by this act, how to be recovered.

Search-warrant.

ALTHOUGH it is not unusual for justices to grant general warrants to search all suspected places for stolen goods, and there is a precedent in Dalton requiring the constable to search all such suspected places as he and the party complaining shall think convenient, yet such practice is generally condemned. But in case of a complaint and oath made of goods stolen, and that the party suspects the goods are in such a house, and shews the cause of his suspicion, the justice may grant a warrant to search in those suspected places mentioned in his warrant, and

Search-warrant.

to attach the goods, and the party in whose custody they are found, and bring them before him, or some other justice, to give an account how he, she or they came by them, and further to abide such order as to law shall appertain. 2 H. H. 113, 150.

On the return of the warrant executed, the justice hath these things to do.

As touching the goods brought before him, if it appear they were not stolen, they are to be restored to the possessor; if it appear they were stolen, they are not to be delivered to the proprietor, but deposited in the hand of the constable, to the end the party robbed may proceed by indicting and convicting the offender.

As touching the party that had the custody of the goods, if they were not stolen, then he is to be discharged; if stolen, but not by him, but by another that sold or delivered them to him, if it appear he was ignorant they were stolen, he may be discharged as an offender, and bound over to give evidence as a witness against him that sold them; but if it appear he knew they were stolen, he must be committed to answer the felony. 2 H. H. 151, 152.

Form of a Search-Warrant.

Berkley. } ff. By I. P. one of his Majesty's Justices of the Peace
County. } for the said County.

WHEREAS it appears to me, by the information on oath of A. T. of --- in the county aforesaid, yeoman, that the following goods, to wit, (here insert the goods particularly) have within two days last past, by some person or persons unknown, been feloniously taken, stolen and carried away, out of the house of the said A. T. at --- aforesaid, in the -- county aforesaid, and that the said A. T. hath probable cause to suspect, and doth suspect, that the said goods, or part thereof, are concealed in the dwelling-house of A. O. of --- in the said county yeoman: These are therefore in his Majesty's name to authorise and require you, with necessary and proper assistants, to enter into the house of the said A. O. at --- aforesaid, in the county aforesaid, and there diligently to search for the said goods; and if the same or any part thereof shall be found, upon such search, that you bring the goods so found, and also the body of the said A. O. before me, or some other of the justices.

justices assigned to keep the peace in the county aforesaid, to be disposed of and dealt withal according to law.

Given under my hand and seal the --- day of --- in the --- year of the reign of ---.

Self-Defence. (See Homicide.)

Self-murder. (See Homicide.)

Servants.

*** ENACTS,** 1. Where any person or persons are imported into this province without being under indenture or contract, and are unable or unwilling to pay for their passages, it shall be lawful for the importer or importers of such person or persons, before any one of his Majesty's justices of the peace within this province, to take an indenture or indentures executed under the hand and seal of such person or persons, in consideration of such passage-money, to serve the said importer or his assigns five years, from the arrival of such person or persons in this province, if he or she at the time of such arrival is of the age of sixteen years or upwards; and to serve until the age of twenty-one years, if such person or persons, at his or her arrival is under the age of sixteen years; which indenture or indentures shall be as binding and effectual in law as if the same had been executed before the arrival of such person or persons in this province. And if such person or persons shall refuse to execute such indenture, or to pay his or her passage-money, it shall be lawful for the importer, after the expiration of twenty days from such refusal, to carry such person or persons before any two of his Majesty's justices of the peace, who are empowered and required, upon due examination of all circumstances, to certify by an instrument in writing under their hands and seals, the time such person or persons shall be obliged to serve such importer, in proportion to the value of the passage, and regard being had to the trade or occupation of such servant or servants; which certificate is sufficient in law to bind every such person according to the tenour thereof, and transferable in as full and ample manner as if an indenture had been voluntarily executed in the manner before directed.

* A. A. 17 G.
2. Anno 1744.

White persons unable to pay their passage-money to this place, are obliged to serve as servants, &c.

Servants
brought from
other colonies
to compleat
their servitude
here.

Proviso.

What servants
are to exceed
five years ser-
vitude.

When their
servitude to
commence.

Bargains
made during
the first ser-
vice declared
void.

No person to
trade with a
servant unless
he has a li-
cence from
his master.

2. All servants brought out of any of his Majesties colonies in America into this province, shall compleat their servitude here, which they ought to have served in the said colonies, according to the tenour of their indentures. Provided the consent of such servant to be brought into this province, and not being a convict, shall be certified on the back of the indenture, under the hand and seal of any one justice of the peace in the colony from whence such servant is brought.

3. Every master, mistress, or other person whatsoever, owning any servant (except convicts) whether by virtue of transportation, purchase or otherwise, shall within six months after receiving such servant into his or her custody (except he or she claim but five years service of such servant) bring the said servant before the Governour of this province or any two justices of the peace, who are authorised to judge and determine of the age of such servant brought before him or them, and to return a certificate of such their determination into the Secretary's Office: And every owner as aforesaid, neglecting or refusing so to bring such servant, shall not claim above five years service of such servant.

4. All servants transported into this province, whether by indenture or otherwise, or so bound or adjudged as aforesaid, shall commence their time of servitude from the first anchoring of the vessel in which they are imported.

5. It shall not be lawful for the master or owner of any servant to make any bargain or agreement with such servant to serve him or her any longer time, before the time of his or her first service by indenture or otherwise is expired; and every bargain or indenture made by any servant during the time of his or her service shall be void.

6. If any person or persons whatsoever shall buy, sell, trade, or barter with any servant, for any commodity, without the licence or consent of such servant's master or mistress, he, she or they so offending, shall forfeit to the master or mistress or such servant treble the value of the things traded for, bought or sold, with full costs of suit; and also Two Pounds proclamation-money to him, her or them that shall inform or sue for the same, within three months after the fact committed, "before
" one or more of his Majesty's justices assigned to keep the
" peace within this province, according to the directions of the
" act for the trial of small and mean causes, A. A. 21 G. 2.

" Anna

"Anno 1747." And in case the person so offending shall not be able to satisfy the same, then such person shall, by any one justice of the peace be bound in a recognizance with good security for his or her good behaviour and appearance at the next General Sessions of the Peace, Assize, &c. where, upon conviction of such buying, selling, trading or bartering with such servant, by confession or sufficient witnesses, the offender shall be punished by whipping on the bare back with stripes at the Watch-house in Charlestown. And all such contracts made with servants are declared to be null and void.

7. If any servant or servants shall lay violent hands on, beat or strike his, her or their master, mistress or overseer, and be convicted thereof by confession, or evidence of his fellow servant or otherwise, before any two justices of the peace in this province, the said justices are required and authorised to order such servant to serve his or her master or mistress, or their assigns, without any wages, for any time not exceeding six months after his or her time by indenture or otherwise is expired, or to order such corporal punishment to be inflicted on such servant, by the hands of a constable or some other white person, not exceeding twenty-one stripes, as the said justices shall in their discretion think fitting, according to the nature of the crime.

Servants striking their masters how to be punished.

8. Any servant or servants unlawfully absenting from his, her or their master, mistress or overseer, shall for every such day's absence serve a week, and so in proportion for a longer or shorter time, provided the whole servitude for such absence does not exceed two years, over and above the time any such servant was to serve by indenture or otherwise, and shall also satisfy his, her or their master or mistress for all such charges as shall be laid out and expended for taking up, whipping and bringing home such servant, by a further and additional servitude, provided the whole time of such additional servitude does not exceed one year after the expiration of the first servitude. And the master or mistress of any run-away servant that intends to take the benefit of this act, shall, as soon as he or she hath recovered him, her, or them, carry the said servant or servants before any two justices of the peace, and there declare upon oath, or prove by one or more sufficient witnesses the time of his, her or their absence, and the charge he or she hath been at in the recovery of such servant or servants, which said justices are thereupon authorised and required to pass judgment, for the

Run-away servants how to be punished.

Servants.

Proviso.

the time such servant shall serve for absence and charges, or either of them, which judgment is sufficient in law to bind every such servant according to the tenour thereof, and to be transferable in as full and ample manner as if indenture or indentures had been voluntarily executed by such servant or servants. Provided always, that every party who may think him, her or themselves aggrieved by the judgment of such justices, may and shall have a right of appeal from such judgment to the Governour and Council of this province for the time being, who are authorised to confirm or reverse such judgment, upon due examination and proof of all circumstances as to them shall seem meet.

Servants having finished their time, may demand certificates of freedom from their masters.

9. Every servant in this province obliged to serve by indenture or otherwise, shall at the expiration of the term of such servitude, receive from his, her or their master or mistress, a certificate of freedom on demand; and whatever master or mistress shall, without good cause, refuse to give such certificate to any servant whose time is expired, shall forfeit Forty Shillings proclamation-money for every such refusal, to be recovered by the party injured, as is directed by the act for the trial of small and mean causes.

How persons harbouring run-away servants are to be proceeded against.

10. All servants, at the expiration of their time of servitude, shall carry their certificate of freedom to the next justice of peace to such servants last place of dwelling, and shall get the said certificate indorsed and attested by the said justice, who is required to indorse and attest the same without fee or reward, which certificate so indorsed and attested shall be a sufficient warrant for any person to entertain such freed servant in his, her or their service: but whoever shall entertain or harbour any run-away servant, not having such indorsed and attested certificate, shall forfeit to the master or mistress of every such servant Twenty Shillings proclamation-money, for every twenty-four hours such servant shall be so harboured or entertained, to be recovered, if not exceeding Four Pounds proclamation-money, as is directed by the act for the trial of small and mean causes, and if exceeding Four Pounds proclamation-money, in any court of Record in this province. Provided the whole sum to be recovered do not exceed treble the value of such servant's time remaining to be served with his or her master or mistress. Provided also, that if such run-away servant shall forge such certificate, and by that means procure him or herself

Proviso.

en-

entertainment, the person ignorantly entertaining such servant shall be free from the forfeiture and penalties imposed by this act; but the servant or any other person forging such certificate, shall, upon conviction, for such forgery be punished by standing in the pillory in Charlestown, or otherwise, as the court before which such person is convicted shall direct, provided the punishment does not extend to life or member.

11. Every master or mistress shall provide and allow his or her servant or servants, sufficient diet, cloathing and lodging, and shall not exceed the bounds of moderation in correcting them beyond the merit of their offences; and it is lawful for any servant, upon any master or mistress, or overseer, by order or consent of any such master or mistress denying and not providing sufficient meat, drink, lodging and cloathing, or who shall unreasonably burthen them beyond their strength with labour, or debar them of their necessary rest and sleep, or excessively beat or abuse them, to repair to any one of his Majesty's justices, there to make his, her or their complaint. And if the said justice shall find by lawful proof that the said servant's complaint is just, he is empowered and required, under the penalty of Five Pounds proclamation-money, by warrant under his hand and seal directed to the next constable, to levy and distrain the goods and chattels of such master or mistress, any sum not exceeding Four Pounds proclamation-money, to be disposed of for the use of the poor of the parish where such offence is committed. And for the second offence, any two justices of the peace are authorised and required, under the penalty of Five Pounds proclamation-money each, by instrument in writing under their hands and seals, to make an order directed to any constable to sell and dispose of the remaining time of service of such servant to any other white person, for such money as can be got for the same, to be paid to the churchwardens of the parish where the offence is committed, for the use of the poor. Saving always the right of appealing to the Governour and Council, from the sentence, judgment or proceedings of such justices, to every person or persons aggrieved thereby. Provided such appeal be lodged in the Secretary's Office within twenty days from the sentence by such justice.

How servants injured by their masters may obtain satisfaction.

12. If any victualer, punch-house keeper, vintner or other person, shall entertain any servant for any time, during which the said servant shall be drunk, trade or game, such victualer, punch-

Penalty on tavern-keepers entertaining servants.

punch-house keeper, or other person so offending, shall forfeit any sum not exceeding Four Pounds proclamation-money, to be recovered as is directed by the act for the trial of small and mean causes, one moiety for the use of the poor of the parish where the offence is committed, and the other moiety for the use of such person or persons as shall inform and sue for the same.

No servant to travel above two miles without a note,

13. No servant or servants whatsoever shall travel by land or water above two miles from the place of his, her or their residence, without a note under the hand of his, her or their master or mistress, or overseer, expressing a permission for such servants so travelling. And if such servant or servants be found two miles from the place of his or their residence, they shall be deemed and taken as fugitive servants, and shall suffer such penalties and punishments as are provided against run-away servants.

Duty of a justice, constable, warden of the Work-house. &c. when run-away servants are apprehended.

14. Every free person within this province is authorised to apprehend any person suspected to be a fugitive servant, and forthwith to conduct such suspected person to the next justice of the peace, who is authorised and required to examine and enquire in the best manner he can, whether such suspected person is really a fugitive servant or not; and if by confession or otherwise it shall appear that such person is a fugitive servant, the justice shall immediately order such servant to be whipped not exceeding twenty stripes, and shall deliver such servant to the constable of the parish, with orders to convey the said servant to his or her master, mistress or overseer, if living within the parish, or otherwise to the constable of the next adjoining parish, who is required to receive such servant, and immediately to convey him or her to his or her master or mistress, or overseer, if living within the parish where such last mentioned constable resides, and so on from constable to constable, and parish to parish, until such servant shall be brought to his or her master, mistress or overseer: but if it shall be doubtful whether such suspected person is really a servant or not, then and in such case such suspected person shall be conveyed from constable to constable of the respective parishes, until he or she shall arrive in Charlestown, where such suspected person shall be delivered to the warden of the Work-house, who is required to receive such suspected servant into his work-house, and to keep him, her or them, to hard labour

labour therein for the space of thirty days; and the warden is to publish in the Gazette, for three weeks successively, an account of such persons so brought, giving the best description he can of their persons; and unless such person can within such time prove him, her or themselves to be free, to the satisfaction of any one of his Majesty's justices of the peace, or shall pay the charges of his, her or their being brought to the Work-house, and of his or their detainer there, and of the said advertisement, such person, at the end of the said thirty days, shall be whipped on the bare back not exceeding twenty lashes, and be turned out of the said work-house.

15. Every free person within this province, intending to travel, may apply to any justice of peace to whom he is known, for a certificate of such freedom, and passport expressing his intention to travel, which every such justice of the peace is required to deliver to such free person demanding the same, without fee or reward.

Justices to grant travelling certificates to free men.

16. Every person keeping a ferry shall provide one free white man to attend the same, and in failure thereof shall forfeit for every month he shall so neglect to keep such freeman, Four Pounds proclamation-money, for the use of such person or persons as shall inform and prosecute for the same, to be recovered before any one justice of the peace, upon the oath of one or more credible witnesses.

Penalty on such as shall keep a ferry, without a free man to attend the same.

And every free white man attending such ferries is authorised and required to examine and apprehend all suspected persons whatsoever, endeavouring to cross such ferry where he shall so attend, and to carry such suspected person before the next justice of the peace, to be dealt with according to the directions of this act: and in case of refusal or resistance by such suspected person, to command all such persons as he shall think needful to aid and assist in the apprehending and carrying such suspected person before the justice.

Free men empowered to command assistance in securing runaway servants.

17. Any person keeping a ferry, who shall transport or suffer to be transported over such ferry, any servant not having a certificate or note as before directed, shall forfeit for every such offence Four Pounds proclamation-money, to the use of the owner of such servant, to be recovered upon the oath of one or more credible witnesses, before a justice of the peace, by warrant of distress and sale of the offenders goods.

Servants not to be ferried without a legal passport.

Servants.

18. The several justices of the peace, officers and other persons required and directed to put this act in execution, are empowered to take and receive for their respective trouble and services therein, the fees limited and ascertained in the following table, viz.

	Proclamation-money.		
	L.	s.	d.
To the justice before whom an indenture is executed	0	1	0
To the justice for his certificate of service, upon re- fusal to execute an indenture	0	2	6
To the Governour for the certificate of the age of each servant	0	5	0
To the justices if certified by them	0	2	6
To the justices for an order of conviction of each servant's laying violent hands on his master, mistress or overseer, each	0	2	6
To the justices for passing judgment for a further time of servitude, on each servant each	0	2	6
To the Governour for his decree, on an appeal from the justices	0	5	0
To the person for apprehending each servant	1	0	0
To mileage to the justices house <i>per</i> mile	0	0	3
To the justice for examination and order thereon	0	2	0
To the constable <i>per</i> mile from where he receives, to the place of delivery of each servant, besides ferriage and diet	0	0	3
To the Marshal or Warden of the Work-house, for receiving and discharging each servant	0	2	6
To the Marshal or Warden for whipping each servant	0	2	0
To diet <i>per</i> day for each servant, allowing at least 1 lb. of bread and 1 lb. of meat, wholesome pro- visions	0	1	3

How the se-
veral fees are
to be paid.

19. The several fees provided by this act shall be paid by the masters, mistresses or overseers of fugitive servants, to the constables delivering such servants, or to the warden of the Work-house of Charlestown, if any such servants shall be brought thither; and after such delivery, the warden and constables shall be liable to pay on demand such part of the fees as belong to the other persons concerned in putting this act in execution, to such persons respectively, under the penalty of forfeit-

forfeiting double the sum so belonging to such other persons, to be recovered by the party grieved, as directed by the act for the trial of small and mean causes.

20. The Warden of the Work-house in Charlestown, for the time being, shall within ten days after he receives any fugitive servant, publish the same at the charge of the owner of such servant in the Gazette; and if he neglects so to do, he is liable to the same penalties as persons unlawfully entertaining fugitive servants. And if the warden shall suffer any fugitive servant so brought to him to escape, before due delivery to his or her master or mistress, or his or her assigns, then and in such case the warden is liable to an action at common law, to be brought at the suit of the party injured, his or her executors or administrators. Provided such action be commenced within six months after the escape of such servant.

Penalty on the warden of the Work-house for neglect of duty.

21. If a master or mistress of any run-away servant, or any justice of the peace, order any corporal punishment to be inflicted on any run-away servant, such master or mistress shall not thereby be deprived of the satisfaction allowed by this act, the one being as necessary to reclaim servants from persisting in their idle courses, as the other is just to repair the damages sustained by the masters or mistresses.

Corporal punishment not to deprive masters of lawful satisfaction.

22. The first constable into whose hands fugitive servants shall, by any justice of peace's warrant be first committed, shall cause such servant to be severely whipped, not exceeding twenty-one lashes, and shall convey him or her to the next constable, towards his or her master or mistress's house, who is to give such servant another correction not exceeding seven lashes in like manner, and so every constable through whose precinct the said servant passeth, to do the like.

How servants are to be punished for running away more than once.

23. In all cases where a man is punishable by a fine, a servant shall receive corporal punishment; (that is to say) for every Twenty Shillings proclamation-money fine nine lashes, and so many such several punishments as there are pounds severally included in the fine. Provided the whole doth not exceed thirty-nine lashes. And unless the master, mistress, or other acquaintance of such servant, shall redeem him or her by making payment of such fine. And if any person shall by procurement of such servant, upon promise and agreement for future service, pay the fine, and release him or her from punishment, such agreement made shall bind every such servant to

Cases where free men are punishable by fines, servants by corporal punishment.

performance, after the time by indenture or otherwise is expired, any thing in this act to the contrary notwithstanding.

Servants bringing in goods, or sent after them, may dispose of the same.

24. All servants bringing in goods with them, not being their own wearing apparel, or having them sent to them for their own use during the time of their service, shall have a property in such goods, and may dispose of them for their own future advantage.

Penalty on masters turning away sick servants, and those who suffer their servants to remain in the work-house, to pay all charges.

25. If any person in this province shall turn away any sick or infirm servant under the pretence of freedom or otherwise, and such servant shall die for want of relief, or become chargeable to any parish, the offender shall forfeit the sum of Twenty Pounds proclamation-money to the use of the parish where such death or charge shall happen, to be recovered by the church-wardens in any Court of Record in this province, and also shall receive the said servant if living, and him or her maintain during the whole time such servant had to serve. And in case any person who is the owner of any servant, who shall be committed by virtue of this act, shall suffer such servant to remain in the common goal or work-house, such person shall be liable to pay the fees and charges occasioned by such committment to the Marshal or Warden respectively, to be recovered as by this act directed.

What cloathing shall be allowed to servants at the end of their time.

26. Every man-servant shall, at the expiration of his servitude, have allowed and given to him, one new hat, a good coat and breeches, either of kersey or broad cloth, two new shirts of coarse white linen, one new pair of shoes and stockings. And all women servants, at the expiration of their servitude, shall have allowed and given them, a waistcoat and petticoat of new half thicks or coarse plains, two new shifts of white linen, a new pair of shoes and stockings, a blue apron, and two caps of white linen.

Disputes unprovided for how to be decided.

27. If any manner of dispute shall arise between masters and their servants, either in relation to their indenture, contracts, wages, freedoms, or any other matter of difference not provided for by this act, it shall be heard and determined by two justices, saving the right of appeal of either party to the Governour and Council; and if such appeal prove vexatious, it shall be lawful for the Governour and Council to order such costs and damages to the party injured by such appeal, either by servitude, by the servant appealing without reason, or such sums of money as they shall think reasonable, by the master

or

or mistress wrongfully appealing, the defendant to be summoned, and not condemned unheard.

28. No white servant is obliged to appear or serve at any muster or musters of the militia, or on patrols, except in times of alarms, invasion or insurrection; the white servants living in and belonging to the inhabitants of Charlestown excepted: They are obliged by the 17. § of the Militia Act, 21 G. 2. to serve at all musters, trainings and exercise, as well as in times of alarm, insurrection or invasion.

No servants obliged to be under arms but in times of alarm, insurrection and invasion, in St. Philip and St. Michael, Charlestown, excepted.

29. If the officers or other persons acting by and under the authority of this act shall be sued for any matter or thing by them done in execution thereof, it shall be lawful for them to plead the general issue and to give this act and the special matter in evidence.

Summons of the Master on Complaint of the Servant.

Berkley } ff. By I. P. one of his Majesty's Justices of the Peace
County, } of the said County.

To any lawful Constable of the County aforesaid.

WHEREAS complaint hath been made unto me by A. S. servant of A. M. of the county aforesaid, planter, that he the said A. M. hath misused and ill-treated him the said A. S. and particularly (as the case shall be). These are therefore to require you to summon the said A. M. to appear before me at --- the --- day of --- to answer the said complaint; and also that you give notice unto him, to bring with him the indenture or certificate of servitude between him and his said servant; and also that you bring before me at the same time and place the said A. S. to make good the said complaint; and that you do also bring with you this precept, and certify to me then and there what you shall have done in the execution thereof. Given, &c.

Warrant of Distress on the foregoing Summons.

Berkley } ff. By I. P. one of his Majesty's Justices of the Peace of
County, } the County aforesaid.

To any lawful Constable of the County aforesaid.

WHEREAS A. M. of --- in the county aforesaid, hath been duly convicted before me, of having misused and ill-treated A. S. an indented servant to him the said A. M. contrary to the Act of

Servants.

of Assembly in that case made and provided: These are therefore to require you to levy the sum of Four Pounds proclamation-money by distress of the goods and chattels of him the said A. M. and if within the space of (five) days, next after such distress by you taken, the said sum of Four Pounds, together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods, and pay the money arising by such sale, to the overseers of the poor of the parish of ----, where the said offence was committed, returning to him the said A. M. the overplus, (if any be) the reasonable charges of taking, keeping, and selling the said distress being first deducted. Given, &c.

Form of an Order by two Justices for the Sale and Disposal of the remaining Time of the Service of a Servant freed from his Master on Account of ill Usage.

Berkley } By I. P. and C. P. two of his Majesty's Justices of
County. } the Peace of Berkley County aforesaid.

To ---- a lawful Constable of the Parish of --- in the County aforesaid.

WHEREAS A. M. of the parish of ----, in the county aforesaid, planter, was, on the --- day of ---, duly convicted before I. P. one of his Majesty's justices of the peace of the said county, of misusing and ill-treating A. S. an indented servant to him the said A. M. contrary to the Act of Assembly in that case made and provided. And whereas the said A. S. upon the --- day of --- made fresh complaint to us against the said A. M. for that he the said A. M. did on the --- day of --- a second time, beat and bruise him the said A. S. and particularly (as the case shall be) contrary to law, whereof the said A. M. hath been fully and duly convicted before us. These are therefore to authorise and require you the said constable, to sell and dispose of the remaining time of the service of the said A. S. to any other white person, for such money as can be got for the same; and that you do pay the money arising from such sale to the church-wardens of the parish where the offence was committed, for the use of the poor. And this shall be your warrant for so doing.

Given under our hands and seals the --- day of ---

Soldiers.

Soldiers.

The regulations concerning the soldiery, are chiefly under the directions of such officers as are appointed for that purpose, by the yearly acts of parliament of Great-Britain against mutiny and desertion ; we shall therefore only insert here such clauses of the acts of parliament on that head, as do immediately relate to the office of justices of the peace in North-America.

Inlisting Soldiers.

WHEN any person shall be inlisted, he shall in four days, but not sooner than twenty four hours, be carried before the next justice or chief magistrate of a town corporate, (not being an officer in the army) and before him shall be at liberty to declare his dissent to such enlisting ; and on such declaration, and returning the enlisting money, and paying Twenty Shillings sterling, for the charges expended on him, he shall forthwith be discharged in presence of such magistrate : But if he shall refuse or neglect, in Twenty Four hours, to return and pay such money as aforesaid, he shall be deemed to be inlisted, as if he had given his assent thereto before such magistrate ; If he declares that he voluntarily inlisted himself, the justice or chief magistrate shall forthwith certify under his hand, that such person is duly inlisted, setting forth the place of his birth, age, and calling (if known,) and that the second and sixth sections of the articles of war, against mutiny and desertion were read to him, and that he has taken the oath mentioned in the said articles of war ; and if any person so certified as duly inlisted, shall refuse to take the said oath of fidelity before such magistrate, the officer from whom he hath received such money, may detain and confine him till he shall take it.

Which said second and sixth sections of the articles of war, are these,

SECTION II.

ART. I. **W**HATSOEVER officer or soldier shall presume to use traitorous or disrespectful words against the sacred person of his Majesty, his Royal Highness the Prince of Wales, or any of the Royal family, if a commissioned officer he shall be cashiered, if a non-commissioned officer he shall suffer

Soldiers:

suffer such punishment as shall be inflicted upon him by the sentence of a court-martial.

ART. 2. Any officer or soldier who shall behave himself with contempt or disrespect towards the General, or other Commander in chief of our forces, or shall speak words tending to his hurt or dishonour, shall be punished according to the nature of his offence, by the judgement of a court-martial.

ART. 3. Any officer or soldier who shall begin, excite, cause or join in any mutiny or sedition in the troop, company or regiment to which he belongs, or in any other troop or company in our service, or on any party, post, detachment or guard, on any pretence whatsoever, shall suffer death, or such other punishment, as by a court-martial shall be inflicted.

ART. 4. Any officer, non-commissioned officer, or soldier, who being present at any mutiny or sedition, does not use his utmost endeavours to suppress the same, or coming to the knowledge of any mutiny, or intended mutiny, does not without delay, give information thereof to his commanding officer, shall be punished by a court-martial with death, or otherwise, according to the nature of the offence.

ART. 5. Any officer or soldier who shall strike his superiour officer, or draw, or offer to draw, or shall lift up any weapon, or offer any violence against him, being in the execution of his office, on any pretence whatsoever, or shall disobey any lawful command of his superiour officer, shall suffer death, or such other punishment as shall, according to the nature of his offence, be inflicted upon him by the sentence of a court-martial.

SECTION VI.

ART. 1. **A**LL officers and soldiers, who having received pay, or having been duly enlisted in our service, shall be convicted of having deserted the same, shall suffer death, or such other punishment, as by a court-martial shall be inflicted.

ART. 2. Any non-commissioned officer or soldier, who shall, without leave from his commanding officer, absent himself from his troop or company, or from any detachment with which he shall be commanded, shall, upon being convicted thereof, be punished according to the nature of his offence, at the discretion of a court-martial.

ART. 3. No non-commissioned officer or soldier, shall enlist himself in any other regiment, troop or company, without a regular

regular discharge from the regiment, troop or company in which he last served, on the penalty of being reputed a deserter, and suffering accordingly ; and in case any officer shall knowingly receive and entertain such non-commissioned officer or soldier, or shall not, after his being discovered to be a deserter, immediately confine him, and give notice thereof to the corps in which he last served, he the said officer so offending, shall by a court-martial be cashiered.

ART. 4. Whatsoever officer or soldier shall be convicted of having advised or persuaded any other officer or soldier to desert our service, shall suffer such punishment as shall be inflicted upon him by the sentence of a court-martial.

And the oath mentioned in the said articles of war is as follows :

I swear to be true to our sovereign lord King George, and to serve him honestly and faithfully in defence of his person, crown and dignity against all his enemies and opposers whatsoever ; and to observe and obey his Majesty's orders, and the orders of the generals and officers set over me by his Majesty.

And the justice's certificate of the whole may be this :

— County, ff.

I do hereby certify, that A. S. of the age of --- years, born at --- in the county of --- shoemaker, came this day before me I. P. one of his Majesty's justices of the peace for the said county of --- and declared, that on the --- day of --- now last past, he did voluntarily enlist himself as a private soldier to serve his said Majesty King George the Second, in the regiment of ---- commanded by ---, and that he now freely consenteth to the same. And thereupon I do hereby also certify, that he the said A. S. is duly enlisted as aforesaid, and that the second and sixth sections of the articles of war against mutiny and desertion were also by me read unto him this day, and that he hath also at the same time taken before me the oath mentioned in the said articles of war. Given under my hand at ---- in the said county of --- the --- day of ---.

But if any person shall receive the enlisting money, knowing it to be such, and shall abscond or refuse to go before such magistrate, in order to declare his assent or dissent, he shall be deemed to be enlisted, and may be proceeded against as if he had taken the said oath before such magistrate.

I i

By

By an act of parliament of Great-Britain, intituled *An act for the better recruiting his Majesty's forces on the continent of America, and for the better regulation of the army, and preventing desertion there, passed the 29th year of his present Majesty, cap. 35, § 8.* It is enacted for the more effectual preventing any person from harbouring deserters, or buying their arms, cloaths or accoutrements, in any of his Majesty's provinces or colonies on the continent of America, that if any person shall harbour, conceal or assist any deserter from his Majesty's service, knowing him to be such, each and every person so offending shall forfeit for every such offence the sum of Five Pounds sterling; and if any person shall knowingly detain, buy or exchange, or otherwise receive any arms, cloaths, caps or other furniture belonging to his Majesty, from any soldier or deserter, upon any account or pretence whatsoever, or cause the colour of such cloaths to be changed, each and every person so offending shall forfeit for every such offence the sum of Five Pounds sterling upon conviction, by the oath of one or more credible witness or witnesses, before any one or more of his Majesty's justices of the peace of the colony or province where the offence shall be committed, which said respective penalties shall be levied by distress and sale of the goods and chattels of such offender or offenders, by warrant under the hand or hands of such justice or justices of the peace, and shall be applied one moiety to the informer or person by whose means such deserter shall be apprehended, and the other moiety to the commanding officer of the troop or company to which such deserter or soldier shall respectively belong. And in case any such offender, who shall be convicted of harbouring or assisting any such deserter or deserters, or of having knowingly received any arms, cloaths, caps, or other furniture belonging to his Majesty, or of having caused the colour of such cloaths to be changed, shall not have sufficient goods and chattels to answer the payment of the said respective penalties, or shall not within four days after conviction pay the same, that then and in every such case such justice or justices of the peace shall, and may by warrant under his or their hand and seal or hands and seals, either commit such offender to the common goal of the place where the offence shall be committed, there to remain without bail or mainprize, for any time not exceeding three months, or cause such offender to be publicly whipt.

SECT.

SECT. XIX. Of the Articles of War subjects the troops raised in America to be governed by the said articles, and to be tried by courts martial, in like manner with the officers and soldiers of the British troops. The same Sect. settles the rank of the provincial officers in America, with the officers of the regular forces, and is as follows:

ART. 1. The officers and soldiers of any troops which are or shall be raised in America, being mustered and in pay, shall at all times, and in all places when joined, or acting in conjunction with our British forces, be governed by these rules or articles of war, and shall be subject to be tried by courts-martial in like manner with the officers and soldiers of our British troops.

ART. 2. For the future all general officers, and colonels serving by commission from any of the Governours, lieutenant or deputy-governours, or presidents of the council for the time being, of our provinces and colonies in North-America, shall on all detachments, courts-martial, or other duty, wherein they may be employed in conjunction with our regular forces, take rank next after all colonels, serving by commissions signed by us, though the commissions of such provincial generals and colonels should be of elder date: and in like manner all lieutenant-colonels, majors, captains, and other inferior officers serving by commission from the governours, lieutenant or deputy-governours, or presidents of the council for the time being, of our said provinces and colonies in North-America, shall on all detachments, court-martial or other duty, wherein they may be employed in conjunction with our regular forces, have rank next after all officers of the like rank serving by commissions signed by us, or by our general commanding in chief in North-America, though the commissions of such provincial lieutenant-colonels, majors, captains, and other inferior officers, should be of older date to those of the like rank signed by us, or by our said general.

Streets in Charlestown.

* ENACTS, That the commissioners appointed, or that shall afterwards be appointed by virtue of this act, or a majority of them, shall have power and authority to agree with

* A. A. 30 G.
2. Anno 1757.

The commissioners to
any agree with

and appoint
a person to
keep the
streets of
Charlestown
clean, &c.

Annoyance
laid in the
streets to be
removed by
order of the
commissioners
&c.

any person or persons, to be scavenger or scavengers to keep the streets, lanes, alleys and other parts of Charlestown clean and in repair, and to remove all filth and nuisances, at the expence of the person who shall be the cause thereof, if such person can be discovered; but if such discovery cannot be made, then at the expence of the inhabitants of Charlestown.

2. If any person shall lay any timber, brick, dirt, or any other thing or annoyance whatever in the said streets, lanes or alleys, so as to obstruct the passage of any persons or carriages through the said streets, lanes or alleys, and shall continue the same for three hours thereon, without the consent of a majority of the said commissioners, then the said commissioners or any two of them may, by order under their hands, direct the person so laying or ordering such annoyances to be laid in the streets, to remove the same within three hours after such order; and in case they shall refuse or neglect so to do, then the commissioners or a majority of them, have power to remove the same, and shall assess the person or persons so laying such filth, dirt or other annoyance, for the charges of removing the same; and also shall cause the sum of Five Pounds current money *per diem* for every day they shall suffer such filth, &c. to be and remain in any of the said streets, lanes and alleys, after such order given to him or them for removing the same; and shall cause the said penalty (if they find it necessary) to be levied by warrant under their hands and seals directed to any lawful constable, to distrain and sell the goods and chattels of such offender or offenders; which penalty shall be paid to the commissioners for the time being, and applied toward defraying the expence of cleansing the streets, &c. of the said town.

The commis-
sioners to meet
monthly, and
give such or-
ders to the
scavengers as
they shall
think fit.

3. The commissioners shall meet at the State-house in Charlestown, or such other place as they shall chuse, on the first Monday in every month, and oftener if they shall see fit. And the scavenger or scavengers shall attend them, and receive such instructions as the commissioners or a majority of them, shall from time to time think fit to give.

The commis-
sioners ir-
powered in
case of the
death, &c. of
a commission-
er to appoint
another.

4. In case of the death, refusal to serve or departure off the province of any of the commissioners, then and in such case the remainder of the commissioners may chuse a new one in the room of him or them so dying, refusing to act or departing this province; and such person or persons so chosen and appointed

pointed shall have the same power for putting this act in execution as the commissioners appointed by this act.

5. The commissioners for the time being shall be allowed a sum not exceeding Five Hundred Pounds currency yearly, to be raised in the general tax on the estates real and personal within the parishes of St. Philip and St. Michael, for paying a scavenger or scavengers, and defraying the several other charges which shall arise or become due in the execution of this act.

A sum not exceeding 500l. per annum allowed to pay a scavenger, &c.

6. If any person driving any cart, waggon or dray, in any of the streets, lanes or alleys in the said town, shall ride upon such cart, waggon or dray, not having some other person on foot to guide the same, every such offender being convicted before any justice of the peace for Berkley county in Charlestown, or any one or more of the said commissioners, by oath of one credible witness, which oath any of the said commissioners may administer, or upon view of any justice of peace, or any one of the said commissioners, shall forfeit the sum of Twenty Shillings current money, to be recovered and applied as before directed; and in default of payment the offender shall be put in the publick stocks for two hours.

A regulation in the driving of carts, &c. through the streets.

7. It shall not be lawful for any person whatever to ride on horseback, or to drive or be driven in any chair, chaise, chariot or coach, in or through any of the said streets, lanes or alleys in the said town, faster than a moderate trot or pace, under the pain of forfeiting Five Pounds current money for every such offence, to be recovered and applied as before directed; and shall also be liable to make satisfaction to all and every person and persons who may sustain damages thereby. And in case a negro or other slave shall be guilty of any of the said offences, he or they shall be whipped at the discretion of any justice of the peace, or of the commissioners or any two of them, not exceeding forty stripes: and the master or owner of such negro or other slave shall be obliged to pay the charge of such whipping, to be recovered as before directed.

No person to ride or drive chair or other carriage, faster than a moderate trot.

8. If any person shall be prosecuted for any matter or thing done in execution of this act, such person may plead the general issue, and give this act and the special matter in evidence.

Persons sued may plead the general issue.

Surety for the Peace.

Surety of the Peace, every Justice of the Peace may take and command by a twofold authority. 1. As a minister commanded thereto by a higher authority. 2. By virtue of his office, derived from his commission: concerning which we will shew,

- I. For what Cause Surety of the Peace shall be granted.
- II. At whose Request it shall be granted.
- III. Against whom it shall be granted.
- IV. In what Manner it shall be granted.
- V. How the Peace-Warrant may be superseded.
- VI. How the Peace-Warrant shall be executed.
- VII. What shall be the Form of a Recognizance for the Peace.

I. For what Cause Surety of the Peace shall be granted.

1. **B**Y the commission of the peace, one or more justices have power to cause to come before them, all those who to any of the King's people, concerning their bodies or the firing of their houses, have used threats, to find sufficient security for the peace, or their good behaviour towards the King and his people; and if they shall refuse to find such security, to cause them in the King's prisons to be safely kept, until they find such security.

2. Wherever a person has just cause to fear that another will do him a corporal hurt, or will procure others so to do, he may demand the surety of the peace against such person, and every justice is bound to grant it, upon the party giving him satisfaction upon oath that he is actually under such fear, and that he has just cause to be so.

3. But if the justice shall perceive that surety is demanded, merely of malice, or for vexation only, without any just cause of fear, it seemeth he may safely deny it. *Dalt. c. 116.*

II. *At*

II. *At whose Request it shall be granted.*

1. **A**LL persons whatsoever under the King's protection, being of sound memory, whether they be natural and goods subjects or aliens, or excommunicate, or attainted of treason, have a right to demand surety of the peace. And it is certain a wife may demand it against her husband, threatening to beat her outrageously; and that a husband may also have it against his wife. 1 *Haw.* 126.

2. An infant under the age of fourteen years may demand this surety and it shall be granted him. *Dalt.* 117.

III. *Against whom it shall be granted.*

THERE seems to be no doubt, but that it ought upon a just cause of complaint, to be granted by any justice of the peace, against any person whatsoever under the degree of nobility, being of sound memory, whether he be a magistrate or private person, and whether he be of full age or under age: but infants and femes-covert ought to find security by their friends, and not to be bound themselves. 1 *Haw.* 127.

IV. *In what Manner it shall be granted.*

1. **I**F the person to be bound be in the presence of the justice, he may be immediately committed, unless he offers sureties; and from hence it follows, that he may be commanded by word of mouth to find sureties, and committed for his disobedience. But if he be absent, he cannot be committed without a warrant from some justice to find sureties, and such warrant ought to be under seal, and shew the cause for which it is granted, and at whose suit (that the party may provide his sureties) it may be directed to any indifferent person. 1 *Haw.* 128.

2. The justice may make the warrant to bring the party before himself or some other justice, or he may make it to bring the party before himself only; for he that maketh the warrant for the most part hath the best knowledge of the matter, and therefore he is the fittest to do justice in the case. 5 *Co.* 59.

V. *How the Peace Warrant may be superseded.*

1. **I**T is said, that if one who fears that the surety of the peace will be demanded against him, find sureties before any justice of the same county, either before or after the war-
rant

warrant is issued against him, he may have a supersedeas from such justice, which shall discharge him from arrest from any other justice, at the suit of the same party, for whose security he has given such security. 1. *Haw.* 129.

2. In which supersedeas it is not necessary to name either the sureties, or the sums in which they are bound ; but yet it is the better form to express them both. *Dalt. c.* 118.

VI. *How the Peace Warrant shall be executed.*

1. **I**T can be executed only by the persons to whom it is directed, or some of them, unless it be directed to the Provost-Marshal, who may either by parole or precept in writing, authorize an officer sworn and known, to serve it.

2. If a person authorized by warrant of a justice to compel a man who is sheltered in a house, to find sureties for the peace or good behaviour, is denied quietly to enter into it, he may justify breaking open the doors in order to take him ; but he must first signify to those in the house the cause of his coming, and request them to give him admittance. 2 *Haw.* 86.

3. If the warrant specially direct that the party shall be brought before the justice that made it, the officer ought not to carry him before any other ; but if the warrant be general, to bring him before any justice of such place, the officer hath the election to bring him before what justice he pleaseth. 1. *Haw.* 128.

4. And if the party is carried before another justice, and not before him who issued the warrant, such other justice must take surety, and bind him by recognizance in all points as the form of the precept doth require. *Dalt. c.* 118.

5. If the justice was deceived in the sufficiency of the sureties, he, or any other justice may afterwards compel the party to find, and put in other sufficient sureties, and may take a new recognizance for the same. *Dalt.* 116.

VII. *What ought to be the Form of a Recognizance for the Peace.*

1. **T**HE recognizance which the justice takes for the keeping of the peace, is rather of congruity, than by any express authority given, either by the common law or by statute.

2. If

2. If it is taken before a justice upon a complaint, it seems it may be regulated by the discretion of such justice, both as to the number and sufficiency of the sureties, and the largeness of the sum, and the continuance of the time for which the party shall be bound.

3. However it seems to be the safest way to bind the party to appear at the next general sessions of the peace, assize, &c.

Surety for the good Behaviour.

A Man may be compelled to find sureties, both for the good behaviour and for the peace; and yet the good behaviour includeth the peace: and he that is bound to the good behaviour is therein also bound to the peace.

This surety for the good behaviour being of near affinity to surety for the peace, both as to the manner in which it is to be taken, superseded and discharged, it seemeth not to require a particular consideration, save only for what behaviour it is to be required.

Mr. Dalton hath inserted a number of instances wherein sureties for the good behaviour may be granted, and they are these that follow:

1. Against rioters.
2. Barators.
3. Common quarrellers and common breakers of the peace.
4. Such as lie in wait to rob, or shall be suspected to lie in wait to rob, or shall assault or attempt to rob another, or shall put passengers in fear or peril.
5. Such as are like to commit murder, homicide, or other grievances to any of the King's subjects.
6. Such as shall practice to poison another.
7. Such as in the presence or hearing of the justice shall misbehave himself in some outrageous manner of force or fraud.
8. Such as are greatly defamed for resorting to houses suspected to maintain adultery or incontinency.
9. Maintainers of houses commonly suspected to be houses of common bawdry.
10. Common whoremongers and common whores.
11. Night-walkers and persons of evil fame and report generally.
12. Suspected persons who live idly, and yet fare well, or are well apparelled, having nothing whereon to live; unless upon examination they give a good account of such their living.
13. Common gamesters, especially if they have not whereon to live.
14. Such as raise hue and cry without cause.
15. Libellers.
16. Putative father of a bastard

bastard child. 17. Such as abuse a justice's warrant, or shall abuse him or the constable in the execution of their office: nay it seemeth, that he who shall use words of contempt, or contrary to good manners, against a justice of the peace, though it be not at such a time as he is executing his office, yet he shall be bound to his good behaviour. 18. Such as charge another before a justice with felony, riot or forcible entry, and yet will not prosecute or give evidence. 19. In general, whatever act or thing is of itself a misbehaviour, is cause sufficient to bind such an offender to the good behaviour. *Dalt.* 124.

Warrant for the Peace or good Behaviour.

Berkley } ff. By I. P. one of his Majesty's Justices of the Peace
County, } of the County aforesaid.

To any lawful Constable of the said County.

FORASMUCH as A. T. of --- in the said county, yeoman, hath personally come before me, and duly made oath, that he the said A. T. is afraid that A. O. of --- in the said county, carpenter, will beat or do him some bodily hurt, and hath therefore prayed surety of the peace against him the said A. O. (or if the good behaviour, that A. O. of --- in the said county, carpenter, hath threatened to do some bodily hurt to him the said A. T. and hath therefore prayed surety of the good behaviour against him the said A. O.). These are therefore on the behalf, and in the name of his Majesty to command you, that immediately on the receipt hereof you bring the said A. O. before me, to find surety as well for his personal appearance at the next General Sessions of the Peace, Assize, &c. to be holden at Charlestown on the --- day of --- next, as also for his keeping the peace (or for his being of the good behaviour) in the mean time towards his Majesty, and all his liege people, and chiefly towards the said A. T. Given, &c,

Recognizance for the Peace or good Behaviour.

Berkley } ff. **BE** it remembered, that on the --- day of ---, in
County. } the --- year of his Majesty's reign, A. O. of ---
in the county aforesaid, yeoman, A. S. and B. S. of the same place, yeomen, came before me J. P. Esq; one of his Majesty's justices assigned to keep the peace within the said county, and acknowledged them-

themselves to owe to our sovereign lord the King, (to wit) the said A. O. the sum of Fifty Pounds proclamation-money of America, the said A. S. and B. S. the sum of Twenty-five pounds like money each, to be respectively made and levied of their several goods and chattels, lands and tenements, to the use of our said lord the King, his heirs and successors, if the said A. O. shall fail in performing the condition underwritten.

The condition of this recognizance is such, that if the above bounden A. O. shall personally appear at the next General Sessions of the Peace, Assize, &c. to be holden at Charlestown on the --- day of --- next, to do and receive what shall then and there be enjoined him by the court, and in the mean time shall keep the peace, and be of good behaviour towards his Majesty, and all his liege people, and especially towards A. S. of --- in the said county, yeoman, then the said recognizance shall be void, or else remain in its force.

Acknowledged before me.

Swearing.

1. **B**Y the canons of the church, if any offend their brethren by swearing, the church-wardens shall present them; and such notorious offenders shall not be admitted to the holy communion till they be reformed. *Can. 109.*

And by the statute 6. & 7. *W. 3. c. 11.* if any person profanely swear or curse, in the hearing of a justice of the peace, or shall be convicted of such swearing by the oath of one person, he shall, if a labourer, common soldier or seamen, forfeit for each oath or curse, One Shilling sterling; and every other person shall forfeit Two Shillings sterling for each oath or curse to the use of the poor. For the second offence double the forfeiture. For the third offence after a second conviction, treble.

2. In default of distress, the offender being above sixteen years, shall be set in the stocks for one hour for every single offence, and for more than one (if convicted at the same time) then two hours.

If under sixteen, and shall not immediately pay, he shall be whipt by the constable, by warrant of the justice, or by the parent, guardian, or master in presence of the constable.

Swearing.

3. Every offence against this act shall be proved within ten days after the offence committed.

4. The justice who omits the duty of his office, forfeits Five Pounds sterling, one moiety to the informer, the other to the poor.

5. The justice shall register in a book all convictions made before him upon this act, and shall certify the same to the next General Sessions of the Peace, Assize, &c. to be there kept upon record by the clerk of the peace, to be seen without fee or reward.

Information.

Berkley } ff. *THE information of A. T. of --- in the county*
County. } *aforesaid, yeoman, made on oath this --- day of*
--- in the --- year of the reign of ---, before me J. P. one of his
Majesty's justices of the peace for the said county, who saith, that
on the --- day of --- now last past, at --- in the parish of --- in
the county aforesaid, he heard A. O. of --- in the said county, la-
bourer, swear --- profane oaths (or curse --- profane curses) in
these words (to wit) &c.

Summons.

Berkley } ff. *By I. P. one of his Majesty's Justices of the Peace of*
County. } *the County aforesaid.*

To any lawful Constable of the said County.

WHEREAS information hath been this day made before me,
upon the oath of A. T. of --- yeoman, that on --- the --- day
of this present month of --- he heard A. O. of --- in the said
county, labourer, at --- in the parish of ---, swear --- profane
oaths. These are therefore to command you to cause the said A. O.
forthwith to appear before me to answer the premisses, and to be
further dealt withal according to law.

Given under my hand and seal at ---, &c.

Warrant to levy the Forfeitures for profane Swearing.

Berkley } ff. *By I. P. one of his Majesty's Justices of the Peace*
County. } *of the County aforesaid.*

To any lawful Constable of the said County.

WHEREAS it was this day duly proved before me, that A. O.
of --- in the county aforesaid, labourer, did on Thursday the
tenth day of this instant September, being then above sixteen years
of

of age, profanely swear --- oaths in the parish of --- in the said county, by reason whereof he hath forfeited to the use of the poor of the said parish, One Shilling Sterling for each oath: These are therefore to require you to levy the said forfeiture, being --- in the whole, upon the goods and chattels of the said A. O. by distress and sale thereof, and that you pay the same when levied to the church-wardens of the said parish, for the use of the poor. And if no distress can be taken as aforesaid; and in case the said A. O. shall not pay the said forfeiture, or give security for the same, that then you do set him in the stocks, there to continue by the space of two hours. Given under my hand and seal, &c.

A Certificate of Conviction for Swearing.

Berkley } ff. J. P. one of his Majesty's justices of the peace for the County. } said county, do hereby certify to the clerk of the Crown and Peace, that the persons whose names are hereunto subscribed were, since the last General Sessions of the Peace, Assize, &c. on the --- day of --- last, convicted before me for swearing --- profane oaths each. Given under my hand and seal, &c.

Taberns, &c.

* **E**NACTS, That the justices of the peace for the time being, living and residing within each parish in this province, or any two of them assembled together, except Charlestown wherein any five justices of the peace also assembled together one to be of the *Quorum*, are authorised, impowered and required, to enquire into the fitness and qualifications of such persons as shall desire licenses to retail strong liquors in their own houses, within their several and respective parishes.

2. The justices in each respective parish in this province are required to meet in their respective parishes twice in every year, (that is to say) on Easter-Monday, and on the first Monday in the month of August, yearly, and every year, in order to grant certificates to the Publick-Treasurer for giving licenses; and no certificates shall be issued by the justices but at the time of their so meeting as aforesaid.

3. The Publick-Treasurer for the time being shall not grant any license to any person or persons whatsoever, to sell wine, cyder, beer, brandy, rum, punch, strong drink, or other spi-

* A. A. 15 G.
2. Anno 1741.

Three justices in the country and five in Charlestown are a *quorum*, for granting licences for retailing liquors.

When the justices are to meet to grant licences.

Penalty on the Publick Treasurer if he give licenses without an order.

rituous liquors, or to keep a billiard-table, without an order to him for that purpose signed by the justices of the peace assembled as aforesaid, and residing within the parish where the person or persons to be licensed shall keep or propose to keep a tavern or punch-house and billiard-table. And in case he shall so do, contrary to the direction, true intent and meaning of this act, he shall forfeit the sum of Twenty Pounds proclamation-money for each licence he shall so grant.

The place where a tavern is to be kept to be mentioned in the licence.

Penalty on such as shall retail liquor in less than three gallons without licence.

To what persons licences may not be granted.

4. In the body of every order from the justices to the Treasurer for granting a licence, and in the licence itself, the street, lane, alley, road, bridge, ferry, village, town or other place where the tavern or punch-house and billiard-table is to be kept, shall be particularly mentioned and specified, otherwise such order shall be void and of none effect.

5. If any person or persons, other than such as shall be allowed and admitted by the justices when assembled as aforesaid, shall at any time, upon his own authority, take upon him, her or them, to keep a tavern, punch-house or tipling-house or billiard-table, or shall without such licence as aforesaid, use selling of wine, cyder, beer, brandy, rum, punch or any strong drink, or other spirituous liquors whatsoever, under the quantity of three gallons, shall forfeit the sum of Twenty Pounds proclamation-money, upon conviction thereof at the court of General Sessions of the Peace, Assize, &c. and shall be bound over to the said court, upon information thereof given upon oath to any justice of the peace.

6. Nothing in this act contained shall extend or be construed to extend to give any power or authority to justices to order the Publick-Treasurer for the time being to grant any licence or licences to any person or persons who hath or have been bred to and used the trade of a carpenter, joiner, bricklayer, plaisterer, shipwright, wheelwright, smith, shoemaker, taylor, tanner, cabinet-maker or cooper, and shall at the time of his or their application for such order, be able and capable, by his or their honest labour and industry of getting a livelihood, and maintaining him or themselves and families by following, using and exercising the trade or trades aforesaid: it being the true intent and meaning of this act, that no such able tradesman shall keep any common tavern, punch-house, tipling-house or billiard-table, or sell wine, cyder, beer, brandy, rum, punch, strong drink, or other spirituous liquors whatsoever, to be spent or consumed

in their respective houses, and in case they so do, they shall be deemed and taken as persons obstinately and upon their own authority taking upon themselves to keep common taverns, punch-houses, or tippling-houses.

7. The penalties or forfeitures expressed in this act shall be appropriated and applied, the one half to his Majesty, his heirs and successors, and the other moiety to the party that will sue for the same, by action of debt, bill, plaint or information, in his Majesty's court of Common Pleas, or any other court of Record in this province.

How the penalties inflicted by this act are to be recovered and applied.

8. Every person living within the parishes of St. Philip and St. Michael, Charlestown, who shall obtain a license to keep a tavern or punch-house, or to sell or retail any strong liquor whatsoever, to be consumed or drank in his or their own house or houses, shall pay to the Publick-Treasurer the sum of Six Pounds proclamation-money, or the value thereof in currency; and if such person keeps a billiard-table, then he or she shall pay Forty Shillings proclamation-money more, or the value thereof in currency. And every person living in Charlestown, who shall sell or retail any strong liquor under the quantity of three gallons, not to be consumed in his or their own houses, shall pay to the Publick-Treasurer for every such license the sum of Four Pounds and Four Shillings proclamation-money, or the value thereof in currency; and every person who shall obtain a license to keep a tavern or punch-house, or to sell or retail any strong liquor whatsoever, to be consumed or drank in his or their own house or houses in any part of this province, out of the limits of the parishes of St. Philip and St. Michael, Charlestown, shall pay to the Publick-Treasurer the sum of One Pound Five Shillings proclamation-money, or the value thereof in currency; and if such persons keep a billiard-table, then they shall pay Forty shillings, proclamation-money more, or the value thereof in currency; and for every license to sell or retail any liquor whatsoever under the quantity of three gallons, not to be consumed in his or their own houses, the sum of Sixteen Shillings proclamation-money, or the value thereof in currency. All which said licenses shall continue of force but for one year only, and at the expiration thereof may be renewed, under the restrictions aforesaid, at the discretion of the justices to whom application shall be made for the same; and the several sums directed to be paid shall be paid at the taking out or renewal

The sums to be paid for licenses, and how to be applied.

of

of every such licence. And by a clause of an Act of Assembly intituled "*An act to revive and continue several acts, &c. and for amending some of the said acts passed the 7th day of April, 1759*, the money arising by tavern-licenses shall be appropriated and applied to and for such uses and purposes as the General Assembly shall from time to time direct and appoint." And the said last mentioned act further enacts, "That the Governor or commander in chief for the time being, with the advice and consent of his Majesty's Council, may limit the number of tavern licenses to be granted in this province whenever it shall be necessary."

Penalty on such as permit play at their billiard-tables after the sun hath been set one hour.

9. If any person keeping a tavern or punch-house and billiard-table, shall permit or suffer any person or persons whatsoever to play at any billiard-table, after the sun hath been set one hour, shall for every such offence forfeit the sum of Four Pounds proclamation-money, to be recovered as is directed by the act for the trial of small and mean causes, one half to the informer, and the other half to his Majesty, his heirs and successors.

Treason.

1. **T**HE words of the statute of the 25. *Edw. 3.* as to this matter are as follows:

"Whereas divers opinions have been before this time, in what case treason shall be laid, and in what not; the King, at the request of the Lords and Commons, hath made a declaration in the manner as hereafter followeth (that is to say) when a man doth compass or imagine the death of our lord the King, or of our lady his Queen, or of their eldest son and heir, or if a man do violate the King's companion (that is his wife) or the King's eldest daughter unmarried, or the wife of the King's eldest son and heir, or if a man do levy war against our lord the King in his realm, or be adherent to the King's enemies in his realm, giving to them aid and comfort in the realm, or elsewhere, and thereof be probably (prove ablement, proveably) attainted of open deed, by the people of their condition: and if a man counterfeit the King's great or privy seal, or his money: and if a man bring false money into the realm, counterfeit to the money

“ money of England, knowing the money to be false; and if
 “ a man slay the chancellour, treasurer, or the King's justices
 “ of the one bench or the other, justices in eyre, or justices of
 “ assize, and all other justices assigned to hear and determine,
 “ being in their places doing their offices.”

2. By the 6 *An. c. 7.* if any person shall, by writing or printing, affirm that the pretender hath any right to the crown, or any other person, otherwise than according to act of parliament, he shall be guilty of high treason. And if any person shall, by preaching, teaching or advised speaking, affirm the same, he shall incur a premunire: but no person shall be prosecuted for words, unless oath be made thereof before a justice in three days, and the prosecution be within three months.

And by the 13. *W. 3. c. 3.* if any person shall hold any correspondence with the pretender, or any person employed by him, or shall remit any money to his use, he shall be guilty of high treason. And by the 17. *G. 2. c. 39.* this is extended to the pretender's sons.

3. Notwithstanding that treason and misprision of treason are not within the letter of the commission of the peace, yet in as much as they are against the peace of the King, and of the government, any justice of the peace may, either upon his own knowledge, or the complaint of others, cause any person to be apprehended for any such offence. And such justice may take the examination of the person so apprehended, and the information of all those who can give any material evidence against him, and put the same in writing; and also bind over such, who are able to give any such evidence, to the court of General Sessions of the Peace, Assize, &c. and certify his proceedings to the court. 2 *Haw. 39.*

Power of the
 justices of the
 peace therein.

4. And having committed the offender (for he is by no meansailable by justices of the peace) it may be adviseable for him to send an account immediately of all the particulars, to the Governour or commander in chief for the time being.

Warrants. (See *Work-house.*)

Warrant.

If a justice see a felony, or other breach of the peace committed in his presence, he may in his own person apprehend the felon; and so he may by word command any person to

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ap-

apprehend him; and such command is a good warrant without writing: but if the same be done in his absence, then he must issue his warrant in writing. Concerning which we will shew,

- I. What Causes it may be granted for.
- II. What is to be done previous to the granting of it.
- III. How far it is grantable on Suspicion.
- IV. The Form of it.

I. What Causes it may be granted for.

THERE seems to be no doubt but that a warrant may be lawfully granted by any justice for any offence against the peace: also it seems clear, that wherever a statute gives to any one justice a jurisdiction over any offence, or a power to require any person to do a certain thing ordained by such statute, it impliedly gives a power to every such justice to make out a warrant to bring before him any person accused of such offence, or compellable to do the thing ordained by such statute. *2. Haw. 84.*

II. What is to be done previous to the granting of it.

IT is convenient, though not always necessary, that the party who demands the warrant, be first examined on oath, touching the whole matter whereupon the warrant is demanded, and that examination put into writing. *1 H. H. 581.* Or at least it is safe and proper to bind him over to give evidence.

III. How far it is grantable on Suspicion.

1. A Justice hath power to issue a warrant to apprehend a person suspected of felony, before he is indicted; and that though the original suspicion be not in himself, but in the party that prays his warrant: for the justices are judges of the reasonableness of the suspicion; and when they have examined the party accusing touching the reasons of his suspicion, if they find the causes of suspicion to be reasonable, it is now become the justices suspicion as well as theirs. *2 H. H. 80.*

IV. The

IV. *The Form of it.*

1. **I**T is safe, but perhaps not necessary, in the body of the warrant to shew the place where it is made; but it seems necessary to set forth the county in the margin at least, if it be not set forth in the body.

2. It may be directed to the constable, or where no constable can be found in due time, to any indifferent person by name who is no constable; for a justice may authorise any one to be his officer, on a special and particular occasion; yet it is most adviseable to direct it to the constable of the precinct wherein it is to be executed.

3. Regularly the warrant, especially if it be for the peace or good behaviour, or the like, where sureties are to be found or required, ought to contain the special cause and matter whereupon it is granted, to the intent that the party upon whom it is to be served may provide his sureties ready, and take them with him to the justice to be bound for him; but if the warrant be for treason, murder or felony, or other capital offence, or for great conspiracies, rebellious assemblies, or the like, it needs not contain any special cause; but there the warrant of the justice may be to bring the party before him, to make answer to such things or matters generally as shall be objected against him on the King's behalf. *Dalt. c. 169.*

4. It ought to set forth the year and day wherein it is made, that in an action brought upon an arrest by virtue of it, it may appear to have been prior to such arrest; and also in case where a statute directeth the prosecution to be within such a time, it may appear that the prosecution is commenced within such time limited. Likewise where a penalty is given to the poor of the parish where the offence shall be committed or the like, it ought to specify the place where the offence was committed. *2 Haw. 85.*

5. Finally, it ought to be under the hand and seal of the justice who makes it out.

Work-house and Hospital.

* **E**NACTS, That five of the inhabitants of the parish of St. Philip, Charlestown, being freeholders, should be chosen annually on Easter-Monday by ballot, to be taken, received

* A. A. 9 G.
2 Anno 1736.

Five of the inhabitants of

Charlestown
to be chosen
commissioners
of the poor of
St. Philip's
parish.

ceived and published, in the same manner as the balloting for members of assembly, to be commissioners of the poor of the said parish; and being so chosen by a majority of the freeholders and owners of lands in the said parish, should for ever thereafter be in name and fact, one body-politick and corporate in law, by the name of the Commissioners of the Poor of the Parish of St. Philip, Charlestown.

Any person
chosen com-
missioner, and
refusing to act
once in seven
years shall for-
feit 20 l.

That if any person or persons so chosen shall refuse or neglect to act, every such person or persons, so refusing or neglecting, shall forfeit the sum of Twenty Pounds current money for every such refusal or neglect, to be recovered by the church-wardens of the said parish for the time being, by warrant from any justice of the peace residing in the said parish, to be applied to the use of the poor of the said parish: but no person is obliged to serve in the said office, nor subject to a fine oftener than once in seven years; and in case any person or persons, after being duly chosen to serve in the said office, shall refuse to take upon him or themselves the execution of the same, some other person or persons qualified as aforesaid, shall be chosen as aforesaid, and so from time to time as often as such neglect or refusal shall happen; which election shall be made within ten days after such refusal or neglect; and the electors shall be summoned by the church-wardens to meet at the place of election, at least seven days before they proceed to such election.

The church-
wardens shall
attend, receive
and publish
the ballot, on
penalty of 50
pounds.

The church-wardens of the parish of St. Philip shall attend and receive, take and publish the ballot for the said commissioners at the time appointed, under the pain of forfeiting the sum of Fifty Pounds current money each, for every neglect therein, to be recovered by action, bill, plaint or information in any court of record in this province, one half of which to him that will inform or sue for the same, and the other half to the use of the poor of the said parish.

The sum of
2000 l. to be
raised by the
commissioners
for building a
work-house,
&c.

The commissioners of the poor, chosen by virtue of this act, had power and authority given to them to raise by assessment on all and every of the inhabitants, owners and proprietors of lands and slaves, stock and cash in the said parish, any sum not exceeding Two Thousand Pounds current money, for building a good substantial and convenient Hospital, Work-House, and House of Correction, for the reception of the poor of the said parish; and for keeping, correcting and setting to work therein vagabonds, common beggars, and other lewd, idle and disorderly persons.

The

The commissioners, or a majority of them, have power and authority to appoint a fit and proper person to be master or warden of the work-house, and house of correction, for such term and time not exceeding three years, as they shall see fit, to have and take the care and charge of the said house and houses, and of the persons that from time to time shall be sent or committed to his care. The commissioners are also empowered to contract with such master or warden to have and take such fees, perquisites, profits, and advantages, out of the profits of the work and labour of such persons as shall be committed to the said work-house, or such other stated and fixed salary as they shall think reasonable, during the term of his appointment.

The commissioners to appoint a master of the said house.

In case any person or persons shall be sent to the work-house or house of correction not able to work, or the profits of whose work and labour shall not be sufficient for their maintenance, during their stay there; or if they be weak and sick, they shall be relieved by the warden of the house; and if such person or persons shall happen to be servants, the expence of their maintenance shall be paid by their masters and mistresses; if they are not servants, then the expence shall be paid by the parish of St. Philip, provided they belong to the same.

Persons not able to work how to be relieved..

The master or warden is obliged to keep a fair and regular book, wherein he shall enter the time of each person's being committed, and keep an account of all the earnings and profits of such person's work and labour, and shall render a full and true account thereof, and of all his transactions relating thereto, to the commissioners once every six months, or oftener if they shall require the same. And the commissioners, or the majority of them, have power and authority from time to time to make such rules, orders and directions for the better governing and keeping the said house and houses, as they shall judge reasonable, fit and necessary; and the warden is obliged to obey and perform all such rules, orders and directions, and to see that the same be complied with. The commissioners are obliged to lay before the General Assembly once every year, an account of all their transactions, accounts and dealings in and about the said houses.

An exact account to be rendered by the master to the commissioners.

Any two justices of the peace (*Quorum unus*) residing within the parish of St. Philip, Charlestown, are empowered and authorised to commit to the house of correction, and there to be kept

What sort of persons are to be committed to the Work-house.

Work-house.

kept according to the rules thereof, all rogues, vagabonds, lewd and idle persons and beggars, stubborn and obstinate apprentices and servants (on complaint of their masters and mistresses) and children (on complaint of their parents) common drunkards, common night-walkers, pilferers, lewd, wanton and lascivious persons, common scolds and brawlers, tradesmen and labourers neglecting their callings, and leading idle and dissolute lives, and who do not provide for the support of their families, upon conviction of any of the said offences, before such justices, on the oath or solemn affirmation of one or more person or persons; provided such committment be not for a longer time than three months, nor less than three days.

The master of the Work-house shall set to work such as are committed to his custody, and punish the stubborn.

The master of the work-house and house of correction, is impowered and directed to set all rogues, vagabonds, beggars, and other lewd idle and disorderly persons as aforesaid, that shall be duly committed into his custody, to work and labour (if they be able) for such time as they shall continue in the said house, and to punish them by putting fetters and shackles upon them, and by moderate whipping, not exceeding nineteen stripes in one day, and from time to time, in case they shall be stubborn, disorderly or idle, and will not perform their task, and that in good condition, to abridge them of their food, as the cause shall require, until they be reduced to better order.

The master of the Work-house to provide suitable materials to those who are obliged to work.

The master of the work-house shall provide, as there shall be occasion, suitable materials necessary and convenient for keeping such person and persons as shall be committed to work during his or their stay there; and no person that shall be committed to the said house, who is able to work and earn sufficient for his maintenance, shall in any sort be chargeable to the said parish for any allowance, either at their bringing in, going forth, or abode there; and all the profits arising from the work of the said persons shall be paid by the said master, every six months, to the commissioners, for the use of the said parish.

Master of the Work-house to be removed for neglect of duty.

In case the master or warden of the work-house shall refuse or neglect to render his accounts, or shall disobey or transgress any of the rules or orders which shall be made and established by the commissioners, or shall be negligent in his duty, and thereof duly convicted before the commissioners or a majority of them, then, and in every such case, the commissioners, or a majority of them, may remove him from his place and office, and

and all benefits arising thereby, and may appoint another in his room.

Any person or persons having stubborn, obstinate, or incorrigible negroes or slaves, may send them to the house of correction, there to be kept to hard labour, or otherwise to be corrected as they shall direct, at the expence of the master or owner of such slave or slaves.

Slaves may be sent and punished in the house of correction.

If the master of any ship or vessel leave behind him any seaman or mariner, which he brought with him into the port and harbour of Charlestown, and who shall within twelve months after such ship or vessel shall depart from this port, become chargeable to the said parish, the persons or persons who are security in the Secretary's Office for such master of such ship or vessel, shall be chargeable and liable to pay to the commissioners of the poor all such sum and sums of money as they shall expend, or cause to be expended, in relief of such seaman and mariners, to be recovered by warrant under the hands and seals of any two justices in the said parishes (*Quorum unus*) and distress and sale of the goods and chattels of such surety and sureties, unless such surety or sureties make it appear that such seaman or mariner is regularly discharged for his preferment, or had run away and deserted from his ship or vessel, without the consent or knowledge of such master, or shall have entered on board any of his Majesty's ships of war; the master or commander of such ship or vessel making oath before the Powder-Receiver of the discharge of such seaman, his running away, or entering on board any of his Majesty's ships as aforesaid, will indemnify such security or securities.

Mariners left behind by masters of vessels shall not be chargeable to the parish.

The father and grand-father, mother and grand-mother, and the children of every poor, old, lame, blind and impotent, or other poor person not able to work, being of a sufficient ability, shall at their own charge, provide for and maintain every such poor and impotent person respectively, in that manner and according to that rate, as the commissioners of the poor or a majority of them shall from time to time direct and order, upon pain of forfeiting to the said commissioners, for the use of the poor of the said parishes, the sum of Ten Pounds current money for every month he she or they shall fail therein, to be recovered and levied by warrant under the hands and seals of any two justices as aforesaid.

Persons of sufficient ability shall maintain their poor relations.

The

Work-house.

The commissioners may set to work all such children whose parents either have or apply for relief from the said parish, and judged by the commissioners not able to maintain their children; and also to put such children out apprentices for such term and time as they shall think meet and necessary, provided such time do not exceed for the males, their age of twenty-one years, and females to the age of eighteen years, or days of marriage.

By A. A. 25 G. 2. § 15. It is enacted that the poor of the parish of St. Philip, and the poor of the parish of St. Michael, shall be maintained and supported jointly, at the expence of the inhabitants of both the said parishes: And that all donations which have heretofore been given for the use of the poor of St. Philip, shall be applied to the use of the poor of both parishes; and the church-wardens and vestry of St. Philip, are impowered and authorised to rate, assess, collect and levy, all such sum and sums of money as shall, from time to time be wanted, for defraying the expence of maintaing and supporting the poor of the said parishes, as well upon the inhabitants of the parish of St. Michael, as upon the inhabitants of the parish of St. Philip, equally and impartially, and in like manner as they have heretofore done.

General Form of a Commitment to the House of Correction.

Berkley } ff. By I. P. and C. P. two of his Majesty's Justices of the
County, } Peace of the said County. (Quorum unus.)

To any lawful Constable of the said County, and to the Master or Warden of the House of Correction at Charlestown.

Form of com-
mitment to
the house of
correction.

T H E S E are to command you the said constable, in his Majesty's name, forthwith to convey and deliver into the custody of the said master or warden of the said house of correction, the body of A. O. being charged before us, (or convicted before us, or otherwise as the case shall be. And here set forth the offence.) And you the said master or warden, are hereby required to receive the said A. O. into your custody in the said house of correction, and him there safely to keep for the space of ----- (and here set forth the time and manner of punishment.) Therein fail you not.

Given under our hands and seals, the --- day of ---, in the --- year of ----.

Form

Form of a Summons against such as refuse to obey the Order
of the Commissioners for maintaining their poor Relations.

Berkley County, ff.

To A. O. of the Parish of ---, in the said County, Yeoman.

WE whose names are herunto set, and seals affixed, two of his Form of a
summons
Majesty's justices of the peace in and for the county aforesaid,
one whereof is of the Quorum, do hereby summon you, personally
to appear before us, at the house of ---, in ---, in the said county,
on the --- day of ---, at the hour of ---, in the forenoon of the
same day, to shew cause why you refuse to pay the rate or assessment
of --- current money, made by the commissioners of the poor of the
parish of St. Philip, Charlestown, for the maintenance of your poor
impotent father, otherwise we shall proceed as if you had appeared.

Given under our hands and seals the --- day of --- &c.

And then the Warrant of Distress thereupon may be thus ;
Berkley County, ff.

To any lawful Constable of the said County.

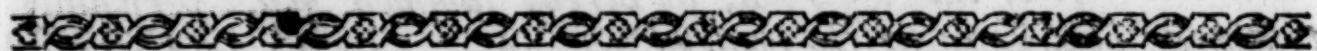
WHEREAS A. O. an inhabitant and occupier of an house Warrant of
distress
in the parish of St. Philip, Charlestown, was duly rated by
the commissioners of the poor of the said parish, in the sum of ---
current money, for the maintenance of his poor impotent father,
agreeable to the directions of the act of assembly in that case made
and provided : And whereas it duly appeareth unto us, two of his
Majesty's justices for the said county, one whereof is of the Quorum,
as well upon the oath of O. P. commissioner of the poor of the said
parish, as otherwise, that the said sum of ---, hath been lawfully
demanded of the said A. O. and that he hath refused and doth
refuse to pay the same : And whereas the said A. O. having ap-
peared before us, in pursuance of our summons for that purpose,
hath not shewn to us any sufficient cause why the same should not be
paid. (Or,) Whereas it hath been duly proved to us upon oath, that
the said A. O. hath been duly summoned to appear before us, to
shew cause why the same should not be paid, but the said A. O.
hath neglected to appear, according to such summons, where-
by he has forfeited the sum of Ten Pounds current money :
These are therefore to require you forthwith to make distress of the
goods and chattels of him the said A. O. and if within the space of
five days next after such distress by you taken, the said sum of Ten
Pounds. together with reasonable charges for taking and keeping

M m

the

Precedents.

the said distress, shall not be paid, that then you do sell the said goods and chattels, so by you distrained; and out of the money arising by such sale, that you do pay to the commissioners of the poor of the said parish, the said sum of Ten Pounds, returning to him the said A. O. the overplus, if any there be, the reasonable charges of taking, keeping and selling the said distress, being first deducted.
Given under our hands and seals this --- day of ---.



PRECEDENTS of several useful DEEDS,
 for the Benefit of such Persons as live in
 the remote Places of the Province, and
 have no Opportunity of applying to a
 Lawyer, when the immediate Execution
 of the same becomes necessary.

Form of a Bargain and Sale of Negro Slaves.

KNOW all men by these presents, That I, A. S. of ----
 &c. for and in consideration of the sum of ---- current
 money of the province of South-Carolina, to me in hand paid
 by C. B. of ----, &c. at or before the execution of these pre-
 sents, the receipt whereof is hereby acknowledged, have bar-
 gained, sold and delivered, and by these presents do bargain,
 sell and deliver unto the said C. B. a negroe man slave named
 --- and a negroe woman slave named ---, &c.

To have and to hold the said hereby bargained premisses
 unto the said C. B. his executors, administrators and assigns,
 to the only proper use and behoof of the said C. B. his exe-
 cutors, administrators and assigns for ever; and I the said A.
 S. for my self, my executors and administrators, the said here-
 by bargained premisses unto the said C. B. his executors, ad-
 ministrators and assigns, against all persons shall and will war-
 rant and for ever defend by these presents.

In witness whereof I the said A. S. have hereunto set my
 hand and seal the ---- day of ---- in the year of our
 Lord One thousand seven hundred and ----

A. S.

Form

Sealed and delivered
 in presence of —

Form of a Bond for Payment of Money.

SOUTH-CAROLINA.

K NOW all men by these presents, that I A. B. of ---
Gent. (*or as his addition shall be*) am holden and
firmly bound and obliged unto H. L. of --- in the full and just
sum of --- current money of the said province, to be paid to
the said H. L. or to his certain attorney, executors, administra-
tors or assigns: To which payment well and truly to be made,
I bind myself and each and every of my heirs, executors and
administrators, firmly by these presents. Sealed with my seal,
and dated the --- day of --- in the year of our Lord One thou-
sand seven hundred and --- and in the --- year of his Majesty's
reign.

The condition of the above obligation is such, That if the
abovebound A. B. his heirs, executors, or administrators, shall
and do well and truly pay, or cause to be paid unto the above-
named H. L. his certain attorney, executors, administrators or
assigns, the full and just sum of --- with the lawful interest
due thereon, on or before the --- day of --- which will be
in the year of our Lord One thousand seven hundred and ---,
without fraud or further delay, then the above obligation to be
void, or else to remain in full force and virtue.

Sealed and delivered
in presence of —

Form of an Assignment of a Bond.

SOUTH-CAROLINA.

W HEREAS I. W. of --- and W. B. of ---, gentlemen,
in and by one bond or obligation bearing date the --- day
of ---, &c. became jointly and severally bound to J. M. of
---, &c. in the penal sum of --- current money of the said
province, conditioned for the payment of --- like money, and
interest at a day long since past, as by the said bond and con-
dition thereof may appear. And whereas there now remains
due to the said J. M. for principal and interest on the said bond,
the sum of --- current money aforesaid. Now, know all men by
these presents, that the said J. M. for and in consideration of
the said sum of --- to him in hand paid by T. E. of ---, &c.

the receipt whereof the said J. M. doth hereby acknowledge, he the said J. M. hath assigned and set over, and by these presents doth assign and set over unto the said T. E. the said bond or obligation, and the monies thereby due and owing, and all his right and interest of, in and to the same. And the said J. M. for the consideration aforesaid, hath made, ordained, constituted and appointed, and by these presents doth make, ordain, constitute and appoint, the said T. E. his executors and administrators, his true and lawful attorney and attornies, irrevocable for him and in his name, and in the name and names of his executors and administrators, but for the sole and proper use and benefit of the said T. E. his executors, administrators and assigns, to ask, require, demand, and receive of the said obligors and either of them, their heirs, executors and administrators, the money due on the said bond; and for non-payment thereof, them and either of them, their and either of their heirs, executors and administrators, to sue for, recover, and receive the same; and on payment thereof to deliver up and cancel the said bond, and give sufficient releases and discharges therefore, and one or more attorney or attornies under him to constitute, and whatsoever his attorney shall lawfully do in the premisses, the said J. M. doth hereby allow and confirm. And the said J. M. doth covenant with the said T. E. that he the said J. M. hath not nor will receive the said monies due on the said bond, or any part thereof, neither shall or will release or discharge the same, or any part thereof, but will own and allow of all lawful proceedings for recovery thereof, he the said T. E. hereby agreeing to save the said J. M. harmless from any costs that may happen to him thereby.

In witness whereof, &c.

Form of a common Bill or Note for Money.

I Promise to pay to Mr. C. D. or order, the sum of One Hundred Pounds current money of South-Carolina, for value received, within twenty-one days after the date hereof, (or on demand).

Witness my hand this --- day of --- 17---

A. B.

£. 100.

Form

Form of a Bargain and Sale of Goods and Chattels,
conditional.

To all People to whom these Presents shall come, I A. S. of ---, &c.
send : Greeting.

K NOW ye, That I the said A. S. for and in consideration of the sum of --- current money of the province of South Carolina, to me in hand at and before the execution of these presents, well and truly paid by C. B. of ---, gentleman, the receipt whereof I do hereby acknowledge, have bargained and sold, and by these presents do bargain and sell unto the said C. B. one silver tankard, &c. (or -- horses or -- neat cattle, *as the case shall be*) to have and to hold the said bargained premises, unto the said C. B. his executors, administrators and assigns, for ever, to the only proper use and behoof of him the said C. B. his executors, administrators and assigns for evermore. And I said A. S. for myself, my executors and administrators, the said bargained premises unto the said C. B. his executors, administrators and assigns, against all persons shall and will warrant and for ever defend by these presents. Provided always, and it is hereby agreed between the parties to these presents, That if I the said A. S. my executors, administrators or assigns, or any of us, do and shall well and truly pay, or cause to be paid unto the said C. B. his executors, administrators or assigns, the sum of --- current money of the province aforesaid, on the day of --- for the redemption of the said hereby bargained premises, then these presents, and every cause, article and thing herein contained, shall cease, determine, and be utterly void, any thing herein before contained to the contrary thereof in anywise notwithstanding. In witness, &c.

Form of a Letter of Attorney to receive Debts.

K NOW all men by these presents, That I, A. B. of the parish of ---, in the province of South-Carolina, Gent. for divers good causes and considerations me hereunto moving, have made, ordained, authorised and appointed, and by these presents do make, ordain, authorise and appoint, C. D. of ---, &c. my true and lawful Attorney, for me, and in my name,
and

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and to my use, to ask, demand, sue for, recover and receive, of and from all and every person and persons whatsoever, in the province aforesaid, (*and in case of any special debt, add*) and particularly of *I. E.* of ---, &c. all such sum and sums of money, debts and demands whatsoever, which now are due and owing to me the said *A. B.* by and from the said person and persons, as well as from the said *I. E.* and to have, use and take, all lawful ways and means, in my name, or otherwise, for the recovery thereof, by attachment, arrest, distress or otherwise, and to compound and agree for the same, and acquittances or other sufficient discharges for the same, for me, and in my name, to make, seal and deliver, and to do all other lawful acts and things whatsoever, concerning the premisses, as fully in every respect, as I myself might or could do if I were personally present; and attorneys, one or more, under him, for the purposes aforesaid, to make, and at his pleasure to revoke, ratifying by these presents, allowing all and whatsoever my said attorney shall, in my name, lawfully do, or cause to be done, in and about the premisses, by virtue of these presents.

In witness whereof, &c.

Form of a Deed of Gift, on Condition to permit the Donee to enjoy during Life.

THIS Indenture made the --- day of ---, In the year of our Lord One thousand seven hundred and ---, and in the --- year of his Majesty's reign, between *M. I.* of the parish of ---, in the province of South-Carolina, spinster, of the one part, and *S. I.* of the parish aforesaid, nephew of the said *M. I.* of the other part; witnesseth, that the said *M. I.* as well for and in consideration of the natural love and affection which she hath and beareth unto her said beloved nephew *S. I.* as also of the sum of Thirty Five Shillings, current money of the said province, to her in hand paid by the said *S. I.* she the said *M. I.* hath given, granted and confirmed, and by these presents doth give, grant and confirm, unto her said nephew *S. I.* one negroe man slave named ---, one negroe woman slave named ---, &c. as also --- horses, marked and branded ---; and --- neat cattle, marked and branded ---, in what place or places soever the same shall be found, as well in her own possession and custody, as in the custody

custody or possession of any other person or persons whatsoever, as they now are, or which, at any time hereafter, during the life of the said M. I. may be improved or encreased : To have and to hold, all and singular the said negroes, horses and neat cattle, and all the other premises aforesaid, unto the said S. I. his executors, administrators and assigns for ever : Provided always, and upon condition that he the said S. I. his executors, administrators and assigns, do and shall permit and suffer her the said M. I. to have, hold, use, occupy, possess and enjoy, the said negroes, horses, neat cattle, and all and singular the premises, above granted, for and during so long time as the said M. I. shall happen to live. And the said M. I. for herself, her executors and administrators, doth covenant, grant and agree, to and with the said S. I. his executors and administrators, that the said S. I. his executors and administrators, by and under the conditions aforesaid, and not otherwise, shall and may peaceably and quietly have, hold and enjoy all and singular the negroes, horses, neat cattle and premises aforesaid, in manner aforesaid, without any molestation, hindrance, or interruption by any person or persons whatsoever, claiming under her, or by her act, means or procurement.

In witness, &c.

Form of a Lease for a Year, to ground a Release.

THIS Indenture made the -- day of -- in the year of our Lord, One thousand seven hundred and -- and in the -- year of his Majesty's reign ; between A. L. of the parish of -- in the province of South-Carolina, Gent. of the one part : and W. L. of Charlestown, in the province aforesaid, Esquire, of the other part, Witnesseth, That the said A. L. for and in consideration of the sum of Ten Shillings, lawful current money, of the province aforesaid, to him in hand well and truly paid, by the said W. L. at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he the said A. L. hath bargained and sold, and by these presents doth bargain and sell, unto the said W. L. all that plantation or tract of land, containing -- acres, being and lying in the parish of -- bounded, (*here insert the boundaries*) together with all and singular the houses, out-houses, edifices, buildings, barns, stables, yards, gardens, orchards, woods, underwoods, timber

timber and timber trees, meadows, pastures, ponds, lakes, fishings, ways, waters, water-courses, paths, passages, liberties, privileges, profits, hereditaments, rights, members and appurtenances whatsoever, thereunto belonging or in anywise appertaining, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof, to have and to hold the said plantation or tract of land, containing --- acres of land, with every the premises and appurtenances thereunto belonging, unto the said W. L. his heirs, executors, administrators and assigns, from the day next before the day of the date of these presents, for and during, and unto the full end and term of one whole year from thence next ensuing, and fully to be compleat and ended; yielding and paying therefore, unto the said A. L. the rent of one pepper-corn, on the last day of the said term, if the same shall be lawfully demanded, to the intent and purpose, that by virtue of these presents, and by force of the statute for transferring of uses into possession, he the said W. L. may be in actual possession of all and singular the premises above mentioned, with every the appurtenances thereunto belonging, and thereby be the better enabled to have, take and receive the reversion and inheritance thereof, which is intended to be to him and his heirs granted and released by the said A. L. by another indenture intended to be made and dated the day next after the day of the date hereof.

In witness whereof, &c.

Form of a Release and Conveyance of Land.

THIS indenture made the --- day of --- in the year of our Lord One thousand seven hundred and ---, and in the --- year of his Majesty's reign, between A. L. of the parish of --- in the province of South-Carolina, Gent. of the one part, and W. L. of the parish of --- in the said province, Esq; of the other part; whereas in and by a certain grant bearing date the -- day of ---, in the year of our Lord One thousand seven hundred and ---, and in the --- year of his Majesty's reign, under the hand of his Excellency J. G. captain-general and governour in chief in and over the province of South-Carolina, and the great seal of the province for that purpose appointed, did give and grant unto A. L. a plantation or tract of land, containing ---
acres,

acres, situate, lying on — river, in the parish of — bound-
ed, (*here insert the boundaries*) and hath such shape, form and
marks, as appears by a plat thereof to the said grant annexed,
as in and by the said plat and grant, duly recorded in the Secre-
tary's office of the said province, reference being thereunto had
may more fully appear. (*If any conveyances are made of the
original grant here they must be inserted.*) Now this indenture
witnesseth, That the said A. L. for and in consideration of the
sum of — lawful current money of the province aforesaid,
to him in hand well and truly paid, by the said W. L. at and
before the sealing and delivery of these presents, the receipt
whereof he doth hereby acknowledge, and to be well contented,
satisfied, and paid, have granted, bargained sold, aliened,
remised, released, conveyed and confirmed, and by these pre-
sents do grant, bargain, sell, alien, remise, release, convey,
and confirm unto the said W. L. in his actual possession, now
being by virtue of a bargain and sale to him thereof made, for
one whole year, and by force of the statute for transferring
of uses into possession, and to his heirs and assigns for ever, all
the said plantation or tract of land, of --- acres, together with all
and singular the houses, out-houses, edifices, buildings, barns,
stables, yards, gardens, orchards, woods, underwoods, timber,
and timber-trees, meadows, pastures, ponds, lakes, fishings,
ways, waters, water-courses, paths, passages, liberties, privileges,
profits, hereditaments, rights, members and appurtenances
whatsoever, thereunto belonging or in anywise appertaining,
and the reversion or reversions, remainder and remainders, rents,
issues and profits thereof, and of every part and parcel there-
of, and all the estate, right, title, interest, use, trust, possession,
property, profit, benefit, claim and demand whatsoever, of
him the said A. L. of, in, to or out of the same premises, and
every part thereof, and all deeds, evidences, escripts and writ-
ings whatsoever, touching or concerning the same premises,
and every part thereof, to have and to hold the said plantation
or tract of --- acres of land, as aforesaid, with every the pre-
misses and appurtenances thereunto belonging, herein before
granted, released and conveyed, unto the said W. L. his heirs
and assigns for ever: to the only proper and absolute use and
behoof of the said W. L. his heirs and assigns; and he the said
A. L. doth hereby, for himself, his heirs executors, administ-
tors and assigns, covenant, promise and agree, to and with the

N n

said

said W. L. his heirs and assigns, in manner and form following, that is to say, that he the said A. L. now is, and until the execution of these presents, shall stand seized of a good, sure, perfect and indefeasible estate of inheritance, in fee-simple, of and in all the aforesaid plantation or tract of — acres of land with the rights, members and appurtenances, without any manner of condition, trust, mortgage, judgement, execution, or incumbrance whatsoever, to alter change, or determine the same; and also that the said W. L. his heirs and assigns, shall and may, from time to time, and at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the said plantation or tract of — acres of land, with every the premises and appurtenances thereunto belonging, without any manner of trouble, hinderance molestation, interruption and denial of him the said A. L. his heirs or assigns, and of all and every other person or persons whatsoever: And lastly the said A. L. for himself, his heirs, executors and administrators, the said plantation or tract of — acres of land, with the premises and appurtenances unto the said W. L. his heirs and assigns against him the said A. L. his heirs and assigns, and all and every other person and persons whatsoever, shall and will warrant and for ever defend by these presents.

In witness whereof, &c.

Form of a Mortgage of Negroes, by Way of Bargain and Sale, on Condition as a Security for the Monies due on Bond and otherwise.

THIS indenture made the --- day of --- in the year of our Lord One thousand seven hundred and ---, and in the --- year of his Majesty's reign, between A. B. of the parish of --- in the province of South-Carolina, Gent. of the one part, and I. C. of the parish of --- in the said province, Gent. of the other part; Whereas the said A. B. is and standeth justly indebted unto the said I. C. in several sums of money, amounting in the whole to ---, lawful current money of the province aforesaid, partly upon a bond entered into by the said A. B. to the said I. C. with condition of the payment of ---, current money of the said province, on the -- day of --, and partly upon an account made up between the said A. B. and I. C. of and for goods sold

fold, and monies paid and laid out by the said I. C. for the said I. B. In consideration thereof, and as well for the better securing and more sure payment of the said sum of ---, to the said I. C. his executors, administrators or assigns, on or before the --- day of --- next ensuing the date hereof; as also for the better securing, and more sure payment to him or them, of all such debts as he the said A. B. shall hereafter contract with the said I. C. at such days and times, and in such manner and form as the same shall grow due and owing, from time to time, according to the tenour and effect of every future contract and agreement, to be had and made between the said A. B. and I. C. and for divers other good causes and considerations, him the said A. B. thereunto especially moving, hath granted, bargained and sold, and by these presents doth grant, bargain and sell unto the said I. C. his executors, administrators and assigns. a negroe man named D. and a negroe woman named E. &c. To have and to hold all and singular the said negroes to the said I. C. his executors, administrators and assigns, as his and their own property, and to his and their own proper use and behoof for ever. Provided always, and upon condition nevertheless, that if the said A. B. his executors, administrators or assigns, do and shall well and truly pay, or cause to be paid unto the said I. C. his executors, administrators or assigns, the said sum of ---, on or before the --- day of ---, next ensuing the date hereof. And also do, and shall from time to time, well and truly pay, and satisfy him the said I. C. his executors, administrators or assigns, all such sum or sums of money, as shall be owing to the said I. C. by or upon any such future contract or agreement as aforesaid, by such part and parts, at such days and times, and in such manner and form, as the same shall be contracted or agreed to be paid between them, their executors or administrators respectively, according to the tenour and effect of every such future contract and agreement, without covin or fraud, that then and from thenceforth this present writing, and every grant, matter and thing herein contained, shall cease, and be void to all intents and purposes whatsoever; any thing herein contained to the contrary notwithstanding. And the said I. C. for himself, his executors and administrators, doth covenant and grant, to and with the said A. B. his executors and administrators, by these presents, that till breach or non-performance shall be made of the proviso or condition aforesaid, he
the

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the said A. B. his executors and administrators, shall or lawfully may have, hold, use and enjoy all and singular the said negroes, he or they not abusing or misusing the same or any of them, without any lett, or interruption of or by him the said I. C. his executors, administrators or assigns.

In witness whereof, I the said A. B. hath hereunto set my hand and seal, the day and year first above-written.

A. B.

*Signed, sealed and delivered
in the presence of*

E. O.

T. G.



THE END.

